

CRIMINAL CODE RECODIFICATION

2022 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies Title 76, Chapters 5 and 5b by redrafting offense statutes into a new structure and clarifies existing law.

Highlighted Provisions:

This bill:

- ▶ reorders language in offense statutes into a standardized format;
- ▶ adds "semen" to list of bodily fluids to offenses concerning propelling an object or substance;
- ▶ clarifies language that certain employees and volunteers are included in the offense concerning the propelling of an object or substance at a correctional or peace officer;
- ▶ reorganizes the offenses of child abuse, aggravated child abuse, and child abandonment into three separate statutes;
- ▶ removes the defense concerning reasonable discipline or management of a child from the offense of aggravated child abuse;
- ▶ removes the defense concerning treatment options for a child's medical condition from the offense of child abandonment;
- ▶ removes the defense concerning use of physical restraint or force on a child from the offense of child abandonment;
- ▶ reorganizes the offenses of abuse of a vulnerable adult, aggravated abuse of a vulnerable adult, personal dignity exploitation of a vulnerable adult, and financial exploitation of a vulnerable adult into four separate statutes;
- ▶ removes the exemption concerning reliance on nonmedical healing from the offenses of personal dignity exploitation of a vulnerable adult and financial exploitation of a vulnerable adult;
- ▶ modifies provisions of the criminal homicide statute to clarify that criminal homicide is not a stand-alone offense but a general term for the collective

enumerated homicide offenses;

- ▶ for clarity, reenacts special mitigation provisions within respective offense statutes;

- ▶ repeals statute defining "targeting a law enforcement officer" and reenacts within relevant provision;

- ▶ for the offenses of unlawful sexual activity with a minor and unlawful adolescent sexual activity, amends limiting offenses to include an attempt of a limiting offense;

- ▶ for the offense of forcible sexual assault, amends limiting offenses to include an attempted object rape;

- ▶ reorganizes the offenses of sexual abuse of a child and aggravated sexual abuse of a child by enacting aggravated sexual abuse as a stand-alone statute;

- ▶ repeals and reenacts within relevant offense statutes provisions qualifying commission of sexual penetration and touch;

- ▶ reorganizes the offenses of custodial sexual relations and custodial sexual misconduct by enacting custodial sexual misconduct as a stand-alone statute;

- ▶ reorganizes the offenses of custodial sexual relations or misconduct with youth receiving state services and custodial sexual misconduct with a youth receiving state services by enacting custodial sexual misconduct with a youth receiving state services as a stand-alone statute;

- ▶ repeals statute defining "indecent liberties" and reenacts within relevant provision;

- ▶ creates three new sections from the human trafficking and smuggling sections;

- ▶ repeals section regarding lesser included offenses of kidnapping and unlawful detention;

- ▶ removes mentally incompetent language from kidnapping statute and replaces it with dependent adult;

- ▶ adds caretaker to the list of persons without whose consent a dependent adult may not be held against their will;

- ▶ narrows the definition of conviction for custodial interference; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

64 This bill provides revisor instructions.

65 **Utah Code Sections Affected:**

66 AMENDS:

67 **76-1-301**, as last amended by Laws of Utah 2019, Chapter 26
68 **76-2-304.5**, as last amended by Laws of Utah 2016, Chapter 194
69 **76-2-401**, as last amended by Laws of Utah 2000, Chapter 126
70 **76-2-402**, as last amended by Laws of Utah 2019, Chapter 201
71 **76-2-404**, as last amended by Laws of Utah 2021, Chapters 150 and 260
72 **76-2-408**, as last amended by Laws of Utah 2021, Chapter 150
73 **76-3-202**, as last amended by Laws of Utah 2018, Chapter 334
74 **76-3-203.2**, as last amended by Laws of Utah 2011, Chapter 91
75 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278
76 **76-3-203.6**, as last amended by Laws of Utah 2020, Chapter 346
77 **76-3-203.7**, as last amended by Laws of Utah 2007, Chapter 339
78 **76-3-203.8**, as last amended by Laws of Utah 2004, Chapter 276
79 **76-3-203.10**, as enacted by Laws of Utah 2010, Chapter 359
80 **76-3-203.13**, as enacted by Laws of Utah 2018, Chapter 394
81 **76-3-406**, as last amended by Laws of Utah 2021, Chapters 260 and 262
82 **76-4-401**, as last amended by Laws of Utah 2019, Chapter 200
83 **76-5-101**, as last amended by Laws of Utah 2003, Chapter 171
84 **76-5-102**, as last amended by Laws of Utah 2015, Chapter 430
85 **76-5-102.3**, as last amended by Laws of Utah 2017, Chapter 123
86 **76-5-102.4**, as last amended by Laws of Utah 2017, Chapters 62 and 123
87 **76-5-102.5**, as enacted by Laws of Utah 1974, Chapter 32
88 **76-5-102.6**, as last amended by Laws of Utah 2019, Chapter 36
89 **76-5-102.7**, as last amended by Laws of Utah 2017, Chapters 123 and 326
90 **76-5-102.8**, as last amended by Laws of Utah 2010, Chapter 222
91 **76-5-102.9**, as enacted by Laws of Utah 2013, Chapter 153
92 **76-5-103**, as last amended by Laws of Utah 2017, Chapters 388 and 454
93 **76-5-103.5**, as last amended by Laws of Utah 2020, Chapter 346

94 **76-5-104**, as last amended by Laws of Utah 1997, Chapter 83
95 **76-5-105**, as enacted by Laws of Utah 1973, Chapter 196
96 **76-5-106**, as last amended by Laws of Utah 1995, Chapter 300
97 **76-5-106.5**, as last amended by Laws of Utah 2020, Chapter 142
98 **76-5-107**, as last amended by Laws of Utah 2015, Chapter 430
99 **76-5-107.1**, as last amended by Laws of Utah 2021, Chapter 262
100 **76-5-107.3**, as last amended by Laws of Utah 2013, Chapter 39
101 **76-5-107.5**, as last amended by Laws of Utah 2011, Chapter 340
102 **76-5-108**, as last amended by Laws of Utah 2021, Chapter 262
103 **76-5-109**, as last amended by Laws of Utah 2017, Chapter 388
104 **76-5-110**, as last amended by Laws of Utah 2021, Chapter 262
105 **76-5-111**, as last amended by Laws of Utah 2019, Chapter 281
106 **76-5-112**, as enacted by Laws of Utah 1999, Chapter 66
107 **76-5-112.5**, as last amended by Laws of Utah 2020, Chapter 132
108 **76-5-113**, as last amended by Laws of Utah 2010, Chapter 276
109 **76-5-201**, as last amended by Laws of Utah 2010, Chapter 13
110 **76-5-202**, as last amended by Laws of Utah 2018, Chapter 343
111 **76-5-203**, as last amended by Laws of Utah 2009, Chapters 125 and 206
112 **76-5-205**, as last amended by Laws of Utah 2018, Chapter 372
113 **76-5-205.5**, as last amended by Laws of Utah 2019, Chapter 312
114 **76-5-206**, as last amended by Laws of Utah 2010, Chapter 157
115 **76-5-207**, as last amended by Laws of Utah 2017, Chapter 283
116 **76-5-207.5**, as last amended by Laws of Utah 2012, Chapter 193
117 **76-5-208**, as last amended by Laws of Utah 2008, Chapter 152
118 **76-5-209**, as enacted by Laws of Utah 1995, Chapter 291
119 **76-5-301**, as last amended by Laws of Utah 2001, Chapter 301
120 **76-5-301.1**, as last amended by Laws of Utah 2013, Chapter 81
121 **76-5-302**, as last amended by Laws of Utah 2020, Chapter 298
122 **76-5-303**, as last amended by Laws of Utah 2021, Chapter 343
123 **76-5-303.5**, as enacted by Laws of Utah 2010, Chapter 374
124 **76-5-304**, as last amended by Laws of Utah 2019, Chapter 106

125 **76-5-305**, as last amended by Laws of Utah 2019, Chapter 26
126 **76-5-307**, as last amended by Laws of Utah 2013, Chapters 196 and 278
127 **76-5-308**, as last amended by Laws of Utah 2020, Chapter 108
128 **76-5-308.5**, as last amended by Laws of Utah 2020, Chapter 108
129 **76-5-309**, as last amended by Laws of Utah 2021, Chapter 241
130 **76-5-310**, as last amended by Laws of Utah 2021, Chapter 241
131 **76-5-311**, as last amended by Laws of Utah 2020, Chapter 108
132 **76-5-401**, as last amended by Laws of Utah 2020, Chapter 108
133 **76-5-401.1**, as last amended by Laws of Utah 2020, Chapter 108
134 **76-5-401.2**, as last amended by Laws of Utah 2018, Chapters 192 and 394
135 **76-5-401.3**, as last amended by Laws of Utah 2021, Chapter 262
136 **76-5-402**, as last amended by Laws of Utah 2013, Chapter 81
137 **76-5-402.1**, as last amended by Laws of Utah 2017, Chapter 290
138 **76-5-402.2**, as last amended by Laws of Utah 2013, Chapter 81
139 **76-5-402.3**, as last amended by Laws of Utah 2017, Chapter 290
140 **76-5-403**, as last amended by Laws of Utah 2019, Chapter 189
141 **76-5-403.1**, as last amended by Laws of Utah 2017, Chapter 290
142 **76-5-404**, as last amended by Laws of Utah 2019, Chapter 189
143 **76-5-404.1**, as last amended by Laws of Utah 2019, Chapter 146
144 **76-5-405**, as last amended by Laws of Utah 2013, Chapter 81
145 **76-5-406.3**, as enacted by Laws of Utah 1996, Chapter 40
146 **76-5-406.5**, as last amended by Laws of Utah 2004, Chapter 213
147 **76-5-407**, as last amended by Laws of Utah 2019, Chapters 189 and 378
148 **76-5-412**, as last amended by Laws of Utah 2018, Chapter 192
149 **76-5-413**, as last amended by Laws of Utah 2021, Chapter 262
150 **76-5-701**, as enacted by Laws of Utah 2019, Chapter 398
151 **76-5-702**, as last amended by Laws of Utah 2020, Chapter 354
152 **76-5-704**, as enacted by Laws of Utah 2019, Chapter 398
153 **76-5b-103**, as last amended by Laws of Utah 2013, Chapter 290
154 **76-5b-201**, as last amended by Laws of Utah 2021, Chapter 262

155 **76-5b-202**, as enacted by Laws of Utah 2011, Chapter 320
156 **76-5b-203**, as last amended by Laws of Utah 2021, Chapters 55 and 95
157 **76-5b-203.5**, as enacted by Laws of Utah 2021, Chapter 95
158 **76-5b-204**, as enacted by Laws of Utah 2017, Chapter 434
159 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134
160 **76-6-102**, as last amended by Laws of Utah 2013, Chapter 272
161 **76-6-203**, as last amended by Laws of Utah 1989, Chapter 170
162 **76-6-302**, as last amended by Laws of Utah 2003, Chapter 62
163 **76-7-101**, as last amended by Laws of Utah 2021, Chapter 159
164 **76-7-305**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
165 **76-8-309**, as last amended by Laws of Utah 2018, Chapter 25
166 **76-8-316**, as last amended by Laws of Utah 2013, Chapter 432
167 **76-8-318**, as enacted by Laws of Utah 2019, Chapter 478
168 **76-9-101**, as last amended by Laws of Utah 2021, Chapter 94 and last amended by
169 Coordination Clause, Laws of Utah 2021, Chapter 260
170 **76-9-702**, as last amended by Laws of Utah 2018, Chapter 192
171 **76-9-702.1**, as last amended by Laws of Utah 2015, Chapter 210
172 **76-9-804**, as enacted by Laws of Utah 2009, Chapter 313
173 **76-9-1003**, as last amended by Laws of Utah 2020, Chapter 108
174 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
175 amended by Coordination Clause, Laws of Utah 2020, Chapter 214
176 **76-10-1306**, as last amended by Laws of Utah 2017, Chapter 433
177 **76-10-1313**, as last amended by Laws of Utah 2020, Chapter 108
178 **76-10-1315**, as last amended by Laws of Utah 2021, Chapter 262
179 **76-10-1504**, as last amended by Laws of Utah 2016, Chapter 399
180 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363

181 ENACTS:

182 **76-1-101.6**, Utah Code Annotated 1953
183 **76-5-109.2**, Utah Code Annotated 1953
184 **76-5-109.3**, Utah Code Annotated 1953
185 **76-5-111.2**, Utah Code Annotated 1953

186 **76-5-111.3**, Utah Code Annotated 1953

187 **76-5-111.4**, Utah Code Annotated 1953

188 **76-5-308.1**, Utah Code Annotated 1953

189 **76-5-308.3**, Utah Code Annotated 1953

190 **76-5-310.1**, Utah Code Annotated 1953

191 **76-5-404.3**, Utah Code Annotated 1953

192 **76-5-412.2**, Utah Code Annotated 1953

193 **76-5-413.2**, Utah Code Annotated 1953

194 RENUMBERS AND AMENDS:

195 **76-1-101.5**, (Renumbered from 76-1-601, as last amended by Laws of Utah 2020,
196 Chapter 287)

197 **76-5-114**, (Renumbered from 76-5-109.1, as last amended by Laws of Utah 2009,
198 Chapter 70)

199 REPEALS:

200 **76-5-210**, as enacted by Laws of Utah 2017, Chapter 454

201 **76-5-306**, as last amended by Laws of Utah 2012, Chapter 39

202 **76-5-416**, as last amended by Laws of Utah 2019, Chapter 378

203

204 *Be it enacted by the Legislature of the state of Utah:*

205 Section 1. Section **76-1-101.5**, which is renumbered from Section 76-1-601 is
206 renumbered and amended to read:

207 ~~**[76-1-601]**~~. **76-1-101.5. Definitions.**

208 Unless otherwise provided, as used in this title:

209 (1) "Act" means a voluntary bodily movement and includes speech.

210 (2) "Actor" means a person whose criminal responsibility is in issue in a criminal
211 action.

212 (3) "Affinity" means a relationship by marriage.

213 (4) "Bodily injury" means physical pain, illness, or any impairment of physical
214 condition.

215 (5) "Conduct" means an act or omission.

(6) "Consanguinity" means a relationship by blood to the first or second degree, including an individual's parent, grandparent, sibling, child, aunt, uncle, niece, or nephew.

(7) "Dangerous weapon" means:

(a) any item capable of causing death or serious bodily injury; or

(b) a facsimile or representation of the item, if:

(i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or

(ii) the actor represents to the victim verbally or in any other manner that ~~[he]~~ the actor is in control of such an item.

(8) "Grievous sexual offense" means:

(a) rape, Section 76-5-402;

(b) rape of a child, Section 76-5-402.1;

(c) object rape, Section 76-5-402.2;

(d) object rape of a child, Section 76-5-402.3;

(e) forcible sodomy, Subsection 76-5-403(2);

(f) sodomy on a child, Section 76-5-403.1;

(g) aggravated sexual abuse of a child, ~~[Subsection 76-5-404.1(4)]~~ Section 76-5-404.3;

(h) aggravated sexual assault, Section 76-5-405;

(i) any felony attempt to commit an offense described in Subsections (8)(a) through (h); or

(j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (8)(a) through (i).

(9) "Offense" means a violation of any penal statute of this state.

(10) "Omission" means a failure to act when there is a legal duty to act and the actor is capable of acting.

(11) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(12) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.

(13) "Public entity" means:

(a) the state, or an agency, bureau, office, department, division, board, commission,

institution, laboratory, or other instrumentality of the state;

(b) a political subdivision of the state, including a county, municipality, interlocal entity, local district, special service district, school district, or school board;

(c) an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of a political subdivision of the state; or

(d) another entity that:

(i) performs a public function; and

(ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.

(14) (a) "Public money" or "public funds" means money, funds, or accounts, regardless of the source from which they are derived, that:

(i) are owned, held, or administered by an entity described in Subsections (13)(a) through (c); or

(ii) are in the possession of an entity described in Subsection (13)(d)(i) for the purpose of performing a public function.

(b) "Public money" or "public funds" includes money, funds, or accounts described in Subsection (14)(a) after the money, funds, or accounts are transferred by a public entity to an independent contractor of the public entity.

(c) "Public money" or "public funds" remains public money or public funds while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

(15) "Public officer" means:

(a) an elected official of a public entity;

(b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;

(c) a judge of a court of record or not of record, including justice court judges; or

(d) a member of the Board of Pardons and Parole.

(16) (a) "Public servant" means:

(i) a public officer;

(ii) an appointed official, employee, consultant, or independent contractor of a public entity; or

(iii) a person hired or paid by a public entity to perform a government function.

(b) Public servant includes a person described in Subsection (16)(a) upon the person's election, appointment, contracting, or other selection, regardless of whether the person has begun to officially occupy the position of a public servant.

(17) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

(18) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

(19) "Writing" or "written" includes any handwriting, typewriting, printing, electronic storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Section 2. Section **76-1-101.6** is enacted to read:

76-1-101.6. Application of definitions to title.

(1) For formatting purposes, sections in this title that contain a criminal offense include an express provision that states that the title definitions in Section 76-1-101.5 apply to that section.

(2) Although a provision described in Subsection (1) is not included in non-offense sections in Title 76 or in other titles, title definitions apply to all statutes within a title unless otherwise expressly provided.

Section 3. Section **76-1-301** is amended to read:

76-1-301. Offenses for which prosecution may be commenced at any time.

(1) As used in this section:

(a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202~~[(1)(d) or (e)]~~(2)(a)(iv) or (v) or Subsection 76-5-202(2)(b).

(b) "Predicate offense" means an offense described in ~~[Section]~~ Subsection 76-5-203(1)(a) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.

(2) Notwithstanding any other provisions of this code, prosecution for the following

309 offenses may be commenced at any time:

- 310 (a) capital felony;
- 311 (b) aggravated murder;
- 312 (c) murder;
- 313 (d) manslaughter;
- 314 (e) child abuse homicide;
- 315 (f) aggravated kidnapping;
- 316 (g) child kidnapping;
- 317 (h) rape;
- 318 (i) rape of a child;
- 319 (j) object rape;
- 320 (k) object rape of a child;
- 321 (l) forcible sodomy;
- 322 (m) sodomy on a child;
- 323 (n) sexual abuse of a child;
- 324 (o) aggravated sexual abuse of a child;
- 325 (p) aggravated sexual assault;
- 326 (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
- 327 (r) aggravated human trafficking or aggravated human smuggling in violation of
- 328 Section 76-5-310;
- 329 (s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306;
- 330 or
- 331 (t) human trafficking of a child, under Section 76-5-308.5.

332 Section 4. Section **76-2-304.5** is amended to read:

333 **76-2-304.5. Mistake as to victim's age not a defense.**

334 (1) It is not a defense to the crime of child kidnapping, a violation of Section
335 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation
336 of Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1; sexual abuse of a
337 child, a violation of Section ~~[76-5-404.1]~~ 76-5-404.3; aggravated sexual abuse of a child, a
338 violation of Subsection 76-5-404.1(4); or an attempt to commit any of these offenses, that the
339 actor mistakenly believed the victim to be 14 years ~~[of age]~~ old or older at the time of the

alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401; sexual abuse of a minor, a violation of Section 76-5-401.1; or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years ~~[of age]~~ old or older at the time of the alleged offense or was unaware of the victim's true age.

(3) It is not a defense to the crime of aggravated human trafficking ~~[or]~~, a violation of Section 76-5-310, aggravated human smuggling, a violation of Section ~~[76-5-310]~~ 76-5-310.1, or human trafficking of a child, a violation of Section 76-5-308.5, that the actor mistakenly believed the victim to be 18 years ~~[of age]~~ old or older at the time of the alleged offense or was unaware of the victim's true age.

(4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years ~~[of age]~~ old or older at the time of the alleged offense or was unaware of the victim's true age.

(5) It is not a defense to any of the following crimes that the actor mistakenly believed the victim to be 18 years ~~[of age]~~ old or older at the time of the alleged offense or was unaware of the victim's true age:

(a) patronizing a prostitute, a violation of Section 76-10-1303;

(b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or

(c) sexual solicitation, a violation of Section 76-10-1313.

Section 5. Section **76-2-401** is amended to read:

76-2-401. Justification as defense -- When allowed.

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

(c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other persons in loco parentis, as limited by Subsection (2);

(d) when the actor's conduct is reasonable discipline of persons in custody under the laws of the state; or

(e) when the actor's conduct is justified for any other reason under the laws of this state.

(2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves causing serious bodily injury, as defined in Section ~~[76-1-601]~~ 76-1-101.5, serious physical injury, as defined in Section 76-5-109, or the death of the minor.

Section 6. Section **76-2-402** is amended to read:

76-2-402. Force in defense of person -- Forcible felony defined.

(1) As used in this section:

(a) "Forcible felony" means aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in ~~[Title 76,]~~ Chapter 5, Offenses Against the ~~[Person]~~ Individual, and arson, robbery, and burglary as defined in ~~[Title 76,]~~ Chapter 6, Offenses Against Property.

(b) "Forcible felony" includes any other felony offense that involves the use of force or violence against an individual that poses a substantial danger of death or serious bodily injury.

(c) "Forcible felony" does not include burglary of a vehicle, as defined in Section 76-6-204, unless the vehicle is occupied at the time unlawful entry is made or attempted.

(2) (a) An individual is justified in threatening or using force against another individual when and to the extent that the individual reasonably believes that force or a threat of force is necessary to defend the individual or another individual against the imminent use of unlawful force.

(b) An individual is justified in using force intended or likely to cause death or serious bodily injury only if the individual reasonably believes that force is necessary to prevent death or serious bodily injury to the individual or another individual as a result of imminent use of unlawful force, or to prevent the commission of a forcible felony.

(3) (a) An individual is not justified in using force under the circumstances specified in Subsection (2) if the individual:

(i) initially provokes the use of force against another individual with the intent to use force as an excuse to inflict bodily harm upon the other individual;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted

commission of a felony, unless the use of force is a reasonable response to factors unrelated to the commission, attempted commission, or fleeing after the commission of that felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the individual withdraws from the encounter and effectively communicates to the other individual the intent to withdraw from the encounter and, notwithstanding, the other individual continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (3)(a)(iii) the following do not, alone, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(4) Except as provided in Subsection (3)(a)(iii):

(a) an individual does not have a duty to retreat from the force or threatened force described in Subsection (2) in a place where that individual has lawfully entered or remained; and

(b) the failure of an individual to retreat under the provisions of Subsection (4)(a) is not a relevant factor in determining whether the individual who used or threatened force acted reasonably.

(5) In determining imminence or reasonableness under Subsection (2), the trier of fact may consider:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other individual's prior violent acts or violent propensities;

(e) any patterns of abuse or violence in the parties' relationship; and

(f) any other relevant factors.

Section 7. Section **76-2-404** is amended to read:

76-2-404. Law enforcement officer use of deadly force.

(1) As used in this section:

(a) "Deadly force" means force that creates or is likely to create, or that the individual using the force intends to create, a substantial likelihood of death or serious bodily injury to an

433 individual.

434 (b) "Officer" means an officer described in Section 53-13-102.

435 (c) "Serious bodily injury" means the same as that term is defined in Section

436 ~~[76-1-601]~~ 76-1-101.5.

437 (2) The defense of justification applies to the use of deadly force by an officer, or an
438 individual acting by the officer's command in providing aid and assistance, when:

439 (a) the officer is acting in obedience to and in accordance with the judgment of a
440 competent court in executing a penalty of death under Subsection 77-18-113(2), (3), or (4);

441 (b) effecting an arrest or preventing an escape from custody following an arrest, if:

442 (i) the officer reasonably believes that deadly force is necessary to prevent the arrest
443 from being defeated by escape; and

444 (ii) (A) the officer has probable cause to believe that the suspect has committed a
445 felony offense involving the infliction or threatened infliction of death or serious bodily injury;
446 or

447 (B) the officer has probable cause to believe the suspect poses a threat of death or
448 serious bodily injury to the officer or to an individual other than the suspect if apprehension is
449 delayed; or

450 (c) the officer reasonably believes that the use of deadly force is necessary to prevent
451 death or serious bodily injury to the officer or an individual other than the suspect.

452 (3) If feasible, a verbal warning should be given by the officer prior to any use of
453 deadly force under Subsection (2)(b) or (2)(c).

454 Section 8. Section **76-2-408** is amended to read:

455 **76-2-408. Officer use of force -- Investigations.**

456 (1) As used in this section:

457 (a) "Dangerous weapon" means a firearm or an object that in the manner of its use or
458 intended use is capable of causing death or serious bodily injury to a person.

459 (b) "Deadly force" means a force that creates or is likely to create, or that the person
460 using the force intends to create, a substantial likelihood of death or serious bodily injury to a
461 person.

462 (c) "In custody" means in the legal custody of a state prison, county jail, or other
463 correctional facility, including custody that results from:

(i) a detention to secure attendance as a witness in a criminal case;

(ii) an arrest for or charging with a crime and committing for trial;

(iii) committing for contempt, upon civil process, or by other authority of law; or

(iv) sentencing to imprisonment on conviction of a crime.

(d) "Investigating agency" means a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.

(e) "Officer" means an officer described in Section 53-13-102.

(f) "Officer-involved critical incident" means any of the following:

(i) an officer's use of deadly force;

(ii) an officer's use of a dangerous weapon against a person who causes injury to any person;

(iii) death or serious bodily injury to any person, other than the officer, resulting from an officer's:

(A) use of a motor vehicle while the officer is on duty; or

(B) use of a government vehicle while the officer is off duty;

(iv) the death of a person who is in custody, but excluding a death that is the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death; or

(v) the death of or serious bodily injury to a person not in custody, other than an officer, resulting from an officer's attempt to prevent a person's escape from custody, to make an arrest, or otherwise to gain physical control of a person.

(g) "Serious bodily injury" means the same as that term is defined in Section ~~[76-1-601]~~ 76-1-101.5.

(2) When an officer-involved critical incident occurs:

(a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and

(b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:

(i) jointly designate an investigating agency for the officer-involved critical incident;

495 and

496 (ii) designate which agency is the lead investigative agency if the officer-involved
497 critical incident involves multiple investigations.

498 (3) The investigating agency under Subsection (2) may not be the law enforcement
499 agency employing the officer who is alleged to have caused or contributed to the
500 officer-involved critical incident.

501 (4) This section does not preclude the law enforcement agency employing an officer
502 alleged to have caused or contributed to the officer-involved critical incident from conducting
503 an internal administrative investigation.

504 (5) Each law enforcement agency that is part of or administered by the state or any of
505 the state's political subdivisions shall adopt and post on the agency's publicly accessible
506 website:

507 (a) the policies and procedures the agency has adopted to select the investigating
508 agency if an officer-involved critical incident occurs in the agency's jurisdiction and one of the
509 agency's officers is alleged to have caused or contributed to the officer-involved incident; and

510 (b) the protocols the agency has adopted to ensure that any investigation of
511 officer-involved incidents occurring in the agency's jurisdiction are conducted professionally,
512 thoroughly, and impartially.

513 Section 9. Section **76-3-202** is amended to read:

514 **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time**
515 **served on parole -- Discretion of Board of Pardons and Parole.**

516 (1) Every individual committed to the state prison to serve an indeterminate term and,
517 after December 31, 2018, released on parole shall complete a term of parole that extends
518 through the expiration of the individual's maximum sentence unless the parole is earlier
519 terminated by the Board of Pardons and Parole in accordance with the supervision length
520 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as
521 described in Subsection 77-27-5(7), to the extent the guidelines are consistent with the
522 requirements of the law.

523 (2) (a) Except as provided in Subsection (2)(b), every individual committed to the state
524 prison to serve an indeterminate term and released on parole on or after October 1, 2015, but
525 before January 1, 2019, shall, upon completion of three years on parole outside of confinement

and without violation, be terminated from the individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or is terminated pursuant to Section 64-13-21.

(b) Every individual committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who was convicted of any felony offense under ~~[Title 76,]~~ Chapter 5, Offenses Against the ~~[Person]~~ Individual, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the individual's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

(3) Every individual convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse~~[-or];~~ Section 76-5-404.1, sexual abuse of a child ~~[and]; or~~ Section 76-5-404.3, aggravated sexual abuse of a child~~[-];~~ or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the individual is earlier terminated by the Board of Pardons and Parole.

(4) An individual who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(5) An individual paroled following a former parole revocation may not be discharged from the individual's sentence until:

(a) the individual has served the applicable period of parole under this section outside of confinement;

(b) the individual's maximum sentence has expired; or

(c) the Board of Pardons and Parole orders the individual to be discharged from the sentence.

(6) (a) All time served on parole, outside of confinement and without violation, constitutes service toward the total sentence.

(b) Any time an individual spends outside of confinement after commission of a parole violation does not constitute service toward the total sentence unless the individual is exonerated at a parole revocation hearing.

(c) (i) Any time an individual spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service toward the total sentence.

(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.

(7) When a parolee causes the parolee's absence from the state without authority from the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(8) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.

(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.

(9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

(10) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Section 10. Section **76-3-203.2** is amended to read:

76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

(1) (a) As used in this section "on or about school premises" means:

(i) (A) in a public or private elementary or secondary school; or

(B) on the grounds of any of those schools;

(ii) (A) in a public or private institution of higher education; or

(B) on the grounds of a public or private institution of higher education;

(iii) within 1,000 feet of any school, institution, or grounds included in Subsections (1)(a)(i) and (ii); and

(iv) in or on the grounds of a preschool or child care facility.

(b) As used in this section:

(i) "Dangerous weapon" has the same definition as in Section ~~[76-1-601]~~ 76-1-101.5.

(ii) "Educator" means a person who is:

(A) employed by a public school district; and

(B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

(iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.

(2) A person who, on or about school premises, commits an offense and uses or threatens to use a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).

(3) (a) A person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).

(b) As used in Subsection (3)(a), "offense" means:

(i) an offense under ~~[Title 76,]~~ Chapter 5, Offenses Against the ~~[Person]~~ Individual; and

(ii) an offense under ~~[Title 76,]~~ Chapter 6, Part 3, Robbery.

(4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits an offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of the educator's employment, the enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony; or

(d) second degree felony is a first degree felony.

(5) The enhanced penalty for a first degree felony offense of a convicted person:

(a) is imprisonment for a term of not less than five years and which may be for life, and imposition or execution of the sentence may not be suspended unless the court finds that the interests of justice would be best served and states the specific circumstances justifying the disposition on the record; and

(b) is subject also to the dangerous weapon enhancement provided in Section 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a firearm.

(6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).

(7) In cases where an offense is enhanced under Subsection (4), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section 76-3-203.8.

(8) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping under Section 76-5-301.1;

(iii) aggravated kidnapping under Section 76-5-302; or

(iv) forcible sexual abuse under Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 11. Section **76-3-203.5** is amended to read:

76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

- 650 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
 651 ~~[Title 76,]~~ Chapter 6, Part 1, Property Destruction;
 652 (B) assault by prisoner, Section 76-5-102.5;
 653 (C) disarming a police officer, Section 76-5-102.8;
 654 (D) aggravated assault, Section 76-5-103;
 655 (E) aggravated assault by prisoner, Section 76-5-103.5;
 656 (F) mayhem, Section 76-5-105;
 657 (G) stalking, Subsection 76-5-106.5(2) ~~[or (3)]~~;
 658 (H) threat of terrorism, Section 76-5-107.3;
 659 (I) aggravated child abuse, Subsection ~~[76-5-109(2)(a) or (b)]~~ 76-5-109.2(3)(a) or (b);
 660 (J) commission of domestic violence in the presence of a child, Section ~~[76-5-109.1]~~
 661 76-5-114;
 662 (K) abuse or neglect of a child with a disability, Section 76-5-110;
 663 (L) abuse~~[-neglect,]~~ or exploitation of a vulnerable adult, Section 76-5-111,
 664 76-5-111.2, 76-5-111.3, or 76-5-111.4;
 665 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
 666 (N) criminal homicide offenses under ~~[Title 76,]~~ Chapter 5, Part 2, Criminal Homicide;
 667 (O) kidnapping, child kidnapping, and aggravated kidnapping under ~~[Title 76,]~~ Chapter
 668 5, Part 3, Kidnapping, Trafficking, and Smuggling;
 669 (P) rape, Section 76-5-402;
 670 (Q) rape of a child, Section 76-5-402.1;
 671 (R) object rape, Section 76-5-402.2;
 672 (S) object rape of a child, Section 76-5-402.3;
 673 (T) forcible sodomy, Section 76-5-403;
 674 (U) sodomy on a child, Section 76-5-403.1;
 675 (V) forcible sexual abuse, Section 76-5-404;
 676 (W) ~~[aggravated sexual abuse of a child or]~~ sexual abuse of a child, Section
 677 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;
 678 (X) aggravated sexual assault, Section 76-5-405;
 679 (Y) sexual exploitation of a minor, Section 76-5b-201;
 680 (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;

(AA) aggravated burglary and burglary of a dwelling under [Title 76,] Chapter 6, Part 2, Burglary and Criminal Trespass;

(BB) aggravated robbery and robbery under [Title 76,] Chapter 6, Part 3, Robbery;

(CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);

(DD) tampering with a witness under Subsection 76-8-508(1);

(EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;

(FF) tampering with a juror under Subsection 76-8-508.5(2)(c);

(GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);

(HH) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

(II) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;

(JJ) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;

(KK) unlawful discharge of a firearm under Section 76-10-508;

(LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

(MM) bus hijacking under Section 76-10-1504; and

(NN) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a

712 habitual violent offender as an aggravating factor in determining the length of incarceration.

713 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
714 provide notice in the information or indictment that the defendant is subject to punishment as a
715 habitual violent offender under this section. Notice shall include the case number, court, and
716 date of conviction or commitment of any case relied upon by the prosecution.

717 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
718 intends to deny that:

719 (A) the defendant is the person who was convicted or committed;

720 (B) the defendant was represented by counsel or had waived counsel; or

721 (C) the defendant's plea was understandingly or voluntarily entered.

722 (ii) The notice of denial shall be served not later than five days prior to trial and shall
723 state in detail the defendant's contention regarding the previous conviction and commitment.

724 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
725 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,
726 of the:

727 (i) defendant's previous convictions for violent felonies, except as otherwise provided
728 in the Utah Rules of Evidence; or

729 (ii) allegation against the defendant of being a habitual violent offender.

730 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
731 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
732 the jury, in which case the allegation shall be tried immediately to the court.

733 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
734 applies.

735 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
736 and the defendant shall be afforded an opportunity to present any necessary additional
737 evidence.

738 (iii) Before sentencing under this section, the trier of fact shall determine whether this
739 section is applicable beyond a reasonable doubt.

740 (d) If any previous conviction and commitment is based upon a plea of guilty or no
741 contest, there is a rebuttable presumption that the conviction and commitment were regular and
742 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the

conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of [Title 76,] Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 12. Section **76-3-203.6** is amended to read:

76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (5), the

offense is a first degree felony and the court shall sentence the defendant to life in prison without parole.

(3) Notwithstanding Subsection (2), the court may sentence the defendant to an indeterminate prison term of not less than 20 years and that may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(4) Subsection (2) does not apply if the prisoner is younger than 18 years ~~[of age]~~ old at the time the offense listed in Subsection (5) is committed and is sentenced on or after May 10, 2016.

(5) Offenses referred to in Subsection (2) are:

(a) aggravated assault by a prisoner, Section 76-5-103.5;

(b) mayhem, Section 76-5-105;

(c) attempted murder, Section 76-5-203;

(d) kidnapping, Section 76-5-301;

(e) child kidnapping, Section 76-5-301.1;

(f) aggravated kidnapping, Section 76-5-302;

(g) rape, Section 76-5-402;

(h) rape of a child, Section 76-5-402.1;

(i) object rape, Section 76-5-402.2;

(j) object rape of a child, Section 76-5-402.3;

(k) forcible sodomy, Section 76-5-403;

(l) sodomy on a child, Section 76-5-403.1;

(m) aggravated sexual abuse of a child, Section ~~[76-5-404.1]~~ 76-5-404.3;

(n) aggravated sexual assault, Section 76-5-405;

(o) aggravated arson, Section 76-6-103;

(p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1; or

(iii) aggravated kidnapping, Section 76-5-302; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 13. Section **76-3-203.7** is amended to read:

76-3-203.7. Increase of sentence for violent felony if body armor used.

(1) As used in this section:

(a) "Body armor" means any material designed or intended to provide bullet penetration resistance or protection from bodily injury caused by a dangerous weapon.

(b) "Dangerous weapon" ~~[has the same definition as]~~ means the same as that term is defined in Section ~~[76-1-601]~~ 76-1-101.5.

(c) "Violent felony" ~~[has the same definition as]~~ means the same as that term is defined in Section 76-3-203.5.

(2) A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, as provided in Section 76-3-203, but if the trier of fact finds beyond a reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

(a) a first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;

(b) a second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and

(c) a third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than 10 years.

(3) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 14. Section **76-3-203.8** is amended to read:

76-3-203.8. Increase of sentence if dangerous weapon used.

(1) As used in this section, "dangerous weapon" ~~[has the same definition as]~~ means the same as that term is defined in Section ~~[76-1-601]~~ 76-1-101.5.

(2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of a felony, the court:

(a) (i) shall increase by one year the minimum term of the sentence applicable by law; and

(ii) if the minimum term applicable by law is zero, shall set the minimum term as one year; and

(b) may increase by five years the maximum sentence applicable by law in the case of a felony of the second or third degree.

(3) A defendant who is a party to a felony offense shall be sentenced to the increases in punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

(a) a dangerous weapon was used in the commission or furtherance of the felony; and

(b) the defendant knew that the dangerous weapon was present.

(4) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed including those in Subsection (2), impose an indeterminate prison term to be not less than five nor more than 10 years to run consecutively and not concurrently.

Section 15. Section **76-3-203.10** is amended to read:

76-3-203.10. Violent offense committed in presence of a child -- Penalties.

(1) As used in this section:

(a) "In the presence of a child" means:

(i) in the physical presence of a child younger than 14 years ~~[of age]~~ old; and

(ii) having knowledge that the child is present and may see or hear the commission of a violent criminal offense.

(b) "Violent criminal offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt to commit a criminal offense involving violence or physical harm that is not a domestic violence offense as defined in Section 77-36-1.

(2) A person commits a violent criminal offense in the presence of a child if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a third party in the presence of a child;

(b) intentionally causes or attempts to cause serious bodily injury to a third party or uses a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5, or other means or force likely to produce death or serious bodily injury, against a third party in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits a violent criminal offense in the presence of a child.

(3) A person who violates Subsection (2) is guilty of a class B misdemeanor.

Section 16. Section **76-3-203.13** is amended to read:

76-3-203.13. Enhanced penalty for unlawful sexual contact with a student.

(1) A person convicted of a sexual offense described in Section 76-5-401.1 or 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of the sexual offense, the actor:

(a) was 18 years ~~[of age]~~ old or older;

(b) held a position of special trust as a teacher, employee, or volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)~~[(c)(ix)]~~(a)(iv)(S); and

(c) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

(2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the offense of which the person was convicted.

Section 17. Section **76-3-406** is amended to read:

76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

(1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

- (a) Section 76-5-202, aggravated murder;
 - (b) Section 76-5-203, murder;
 - (c) Section 76-5-301.1, child kidnapping;
 - (d) Section 76-5-302, aggravated kidnapping;
 - (e) Section 76-5-402, rape, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
 - (f) Section 76-5-402.1, rape of a child;
 - (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection 76-5-402.2[(1)(b), (1)(c), or (2)](3)(b), (3)(c), or (4);
 - (h) Section 76-5-402.3, object rape of a child;
 - (i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);
 - (j) Section 76-5-403.1, sodomy on a child;
 - (k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under Subsection 76-5-404[(2)(b) or (3)](3)(b)(i) or (ii);
 - (l) [Subsections 76-5-404.1(4) and (5)] Section 76-5-404.3, aggravated sexual abuse of a child;
 - (m) Section 76-5-405, aggravated sexual assault; or
 - (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- (2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the defendant:
- (a) was under 18 years old at the time of the offense; and

(b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Section 18. Section **76-4-401** is amended to read:

76-4-401. Enticing a minor -- Elements -- Penalties.

(1) As used in this section:

(a) "Minor" means a person who is under the age of 18.

(b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone, computer, or other electronic communication device to another person's telephone, computer, or other electronic communication device by addressing the communication to the person's telephone number or other electronic communication access code or number.

(2) (a) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.

(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:

(i) initiate contact with a minor or a person the actor believes to be a minor; and

(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is employed by a law enforcement agency was involved in the detection or investigation of the offense.

(4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

(a) enticement to engage in sexual activity which would be a first degree felony for the actor is a:

(i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

(b) enticement to engage in sexual activity which would be a second degree felony for the actor is a third degree felony;

(c) enticement to engage in sexual activity which would be a third degree felony for the actor is a class A misdemeanor;

(d) enticement to engage in sexual activity which would be a class A misdemeanor for the actor is a class B misdemeanor; and

(e) enticement to engage in sexual activity which would be a class B misdemeanor for the actor is a class C misdemeanor.

(5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) Section 76-4-401, enticing a minor;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-402, rape;

(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404, forcible sexual abuse;

(x) Section 76-5-404.1, sexual abuse of a child and Section 76-5-404.3, aggravated sexual abuse of a child;

(xi) Section 76-5-405, aggravated sexual assault;

(xii) Section 76-5-308.5, human trafficking of a child;
 (xiii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections (5)(b)(i) through (xii); or
 (xiv) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through (xiii).

Section 19. Section **76-5-101** is amended to read:

CHAPTER 5. OFFENSES AGAINST THE INDIVIDUAL

76-5-101. Definitions.

~~[For purposes of this part "prisoner" means any person]~~

Unless otherwise provided, as used in this part:

(1) "Detained individual" means an individual detained under Section 77-7-15.

(2) "Prisoner" means an individual who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the Division of Juvenile Justice Services regardless of whether the confinement is legal.

Section 20. Section **76-5-102** is amended to read:

76-5-102. Assault -- Penalties.

~~[(1) Assault is:]~~

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits assault if the actor:

(a) ~~[an attempt]~~ attempts, with unlawful force or violence, to ~~[do]~~ inflict bodily injury ~~[to another]~~ on an individual; or

(b) commits an act, ~~[committed]~~ with unlawful force or violence, that:

(i) causes bodily injury to [another] an individual; or

(ii) creates a substantial risk of bodily injury to [another] an individual.

~~[(2) Assault]~~ (3) (a) A violation of Subsection (2) is a class B misdemeanor.

~~[(3) Assault]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A misdemeanor if:

~~[(a)]~~ (i) the [person] actor causes substantial bodily injury to [another] an individual; or

~~[(b)]~~ (ii) the [victim] individual is pregnant and the [person] actor has knowledge of the pregnancy.

(4) ~~[It is not a defense against assault, that the accused]~~ The fact that the actor caused serious bodily injury to ~~[another]~~ an individual is not a defense to a violation of this section.

Section 21. Section **76-5-102.3** is amended to read:

76-5-102.3. Assault or threat of violence against a school employee.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Employee" includes a volunteer.

(iii) "Threat of violence" means an offense under Section 76-5-107.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) Any person who commits an assault as defined in Section 76-5-102, or commits]~~

(2) An actor commits assault or threat of violence against a school employee if:

(a) the actor commits assault or a threat of violence [as defined in Section 76-5-107,]
against an employee of a public or private school~~[-with];~~

(b) the actor has knowledge that the individual is an employee[-]; and [when]

(c) the employee is acting within the scope of [his] the employee's authority as an
employee~~[-is guilty of a class A misdemeanor.].~~

~~[(2) As used in this section, "employee" includes a volunteer.]~~

(3) A violation of Subsection (2) is a class A misdemeanor.

Section 22. Section **76-5-102.4** is amended to read:

76-5-102.4. Assault against peace officer or a military servicemember in uniform

-- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Assault" means [the same as that term is defined in] an offense under Section
76-5-102.

~~[(b)]~~ (ii) "Military servicemember in uniform" means:

~~[(i)]~~ (A) a member of any branch of the United States military who is wearing a
uniform as authorized by the member's branch of service; or

~~[(ii)]~~ (B) a member of the National Guard serving as provided in Section 39-1-5 or
39-1-9.

~~[(c)]~~ (iii) "Peace officer" means:

~~[(i)]~~ (A) a law enforcement officer certified under Section 53-13-103;

1053 ~~[(iii)]~~ (B) a correctional officer under Section 53-13-104;

1054 ~~[(iii)]~~ (C) a special function officer under Section 53-13-105; or

1055 ~~[(iv)]~~ (D) a federal officer under Section 53-13-106.

1056 ~~[(d)]~~ (iv) "Threat of violence" means ~~[the same as that term is defined in]~~ an offense

1057 under Section 76-5-107.

1058 (b) Terms defined in Section 76-1-101.5 apply to this section.

1059 ~~[(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3)~~

1060 ~~and (4), who:]~~

1061 (2) (a) An actor commits assault against a peace officer if:

1062 ~~[(a)]~~ (i) the actor commits an assault or threat of violence against a peace officer, with

1063 knowledge that the ~~[person]~~ peace officer is a peace officer~~[-and when]; and~~

1064 (ii) at the time of the assault or threat of violence, the peace officer [is] was acting

1065 within the scope of authority as a peace officer[-or].

1066 (b) An actor commits an assault or threat of violence against a military servicemember

1067 in uniform [when that] if:

1068 (i) the actor commits an assault or threat of violence against a military servicemember

1069 in uniform; and

1070 (ii) at the time of the assault or threat of violence, the servicemember [is] was on orders

1071 and acting within the scope of authority granted to the military servicemember in uniform.

1072 (3) (a) A [person who violates] violation of Subsection (2) is [guilty of a third degree

1073 felony if the person:] a class A misdemeanor.

1074 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree

1075 felony if the actor:

1076 ~~[(a)]~~ (i) has been previously convicted of a class A misdemeanor or a felony violation

1077 of this section; or

1078 ~~[(b) the person]~~ (ii) causes substantial bodily injury.

1079 ~~[(4) A person who violates]~~ (c) Notwithstanding Subsections (3)(a) and (b), a violation

1080 of Subsection (2) is [guilty of] a second degree felony if the [person] actor uses:

1081 ~~[(a)]~~ (i) a dangerous weapon ~~[as defined in Section 76-1-601]; or~~

1082 ~~[(b)]~~ (ii) other means or force likely to produce death or serious bodily injury.

1083 (4) This section does not affect or limit any individual's constitutional right to the

lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

(5) ~~[A person]~~ An actor who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

~~[(7) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.]~~

Section 23. Section **76-5-102.5** is amended to read:

76-5-102.5. Assault by prisoner.

~~[Any prisoner who commits assault,]~~

(1) (a) As used in this section, "assault" means an offense under Section 76-5-102.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits assault by prisoner if the actor:

(a) is a prisoner; and

(b) intending to cause bodily injury, commits an assault.

(3) A violation of Subsection (2) is ~~[guilty of a felony of the]~~ a third degree felony.

Section 24. Section **76-5-102.6** is amended to read:

76-5-102.6. Propelling object or substance at a correctional or peace officer --

Penalties.

~~[(1) It is unlawful for]~~ (1) (a) As used in this section, "infectious agent" means the same as that term is defined in Section 26-6-2.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of propelling an object or substance at a correctional or peace officer if the actor:

(a) is a prisoner or a detained individual ~~[detained pursuant to Section 77-7-15 to throw]; and~~

(b) throws or otherwise ~~[propel any]~~ propels an object or substance at a peace officer, a correctional officer, or an employee or volunteer, including a health care provider.

~~[(2) Except as provided in Subsection (3), a]~~

~~(3) (a)~~ A violation of Subsection ~~[(1)]~~ (2) is a class A misdemeanor.

~~[(3) A]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection ~~[(1)]~~ (2) is a third degree felony if:

~~[(a)]~~ (i) the object or substance causes substantial bodily injury to the peace officer, the correctional officer, or the employee or volunteer, including a health care provider; or

~~[(b) (i)]~~ (ii) (A) the object or substance is:

~~[(A)]~~ (I) blood, urine, semen, or fecal material;

~~[(B)]~~ (II) an infectious agent ~~[as defined in Section 26-6-2]~~ or a material that carries an infectious agent;

~~[(C)]~~ (III) vomit or a material that carries vomit; or

~~[(D)]~~ (IV) the ~~[prisoner's or detained individual's]~~ actor's saliva, and the ~~[prisoner or detained individual]~~ actor knows ~~[he or she]~~ the actor is infected with HIV, hepatitis B, or hepatitis C; and

~~[(ii)]~~ (B) the object or substance comes into contact with any portion of the officer's, employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes into contact with any open wound on the officer's, employee's, volunteer's, or health care provider's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 25. Section **76-5-102.7** is amended to read:

76-5-102.7. Assault or threat of violence against health care provider or emergency medical service worker -- Penalty.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Emergency medical service worker" means an individual licensed under Section 26-8a-302.

(iii) "Health care provider" means the same as that term is defined in Section

1146 78B-3-403.

1147 (iv) "Threat of violence" means an offense under Section 76-5-107.

1148 (b) Terms defined in Section 76-1-101.5 apply to this section.

1149 ~~[(1) A person who]~~ (2) An actor commits ~~[an]~~ assault or threat of violence against a
1150 health care provider or emergency medical service worker ~~[is guilty of a class A misdemeanor]~~
1151 if:

1152 (a) the ~~[person]~~ actor is not a prisoner or a ~~[person detained under Section 77-7-15]~~
1153 detained individual;

1154 (b) the actor commits an assault or threat of violence;

1155 ~~[(b)]~~ (c) the ~~[person]~~ actor knew that the victim was a health care provider or
1156 emergency medical service worker; and

1157 ~~[(c)]~~ (d) the health care provider or emergency medical service worker was performing
1158 emergency or life saving duties within the scope of his or her authority at the time of the assault
1159 or threat of violence.

1160 ~~[(2) A person who violates]~~ (3) (a) A violation of Subsection [(1)] (2) is a class A
1161 misdemeanor.

1162 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is [guilty of] a
1163 third degree felony if the [person] actor:

1164 ~~[(a)]~~ (i) causes substantial bodily injury~~[, as defined in Section 76-1-601];~~ and

1165 ~~[(b)]~~ (ii) acts intentionally or knowingly.

1166 ~~[(3) As used in this section:]~~

1167 ~~[(a) "Assault" means the same as that term is defined in Section 76-5-102.]~~

1168 ~~[(b) "Emergency medical service worker" means a person licensed under Section~~
1169 ~~26-8a-302.]~~

1170 ~~[(c) "Health care provider" means the same as that term is defined in Section~~
1171 ~~78B-3-403.]~~

1172 ~~[(d) "Threat of violence" means the same as that term is defined in Section 76-5-107.]~~

1173 Section 26. Section **76-5-102.8** is amended to read:

1174 **76-5-102.8. Disarming a peace officer -- Penalties.**

1175 (1) (a) As used in this section:

1176 ~~[(a)]~~ (i) "Conductive energy device" means a weapon that uses electrical current to

1177 disrupt voluntary control of muscles.

1178 ~~[(b)]~~ (ii) "Firearm" ~~[has the same meaning as]~~ means the same as that term is defined in
1179 Section 76-10-501.

1180 (b) Terms defined in Section 76-1-101.5 apply to this section.

1181 (2) An actor ~~[is guilty of an offense under Subsection (3) who]~~ commits disarming a
1182 peace officer if the actor intentionally takes or removes, or attempts to take or remove a firearm
1183 or a conductive energy device from ~~[the person]~~ an individual or immediate presence of ~~[a~~
1184 ~~person]~~ an individual who the actor knows is a peace officer:

1185 (a) without the consent of the peace officer; and

1186 (b) while the peace officer is acting within the scope of ~~[his]~~ the peace officer's
1187 authority as a peace officer.

1188 (3) (a) ~~[Conduct under]~~ A violation of Subsection (2) regarding a firearm is a first
1189 degree felony.

1190 (b) ~~[Conduct under]~~ A violation of Subsection (2) regarding a conductive energy
1191 device is a third degree felony.

1192 Section 27. Section **76-5-102.9** is amended to read:

1193 **76-5-102.9. Propelling a bodily substance or material -- Penalties.**

1194 (1) (a) As used in this section~~[, a listed substance or material is]~~:

1195 (i) "Bodily substance or material" means:

1196 ~~[(a)]~~ (A) saliva, blood, urine, semen, or fecal material;

1197 ~~[(b)]~~ (B) an infectious agent ~~[as defined in Section 26-6-2 of]~~ or a material that carries
1198 an infectious agent; or

1199 ~~[(c)]~~ (C) vomit or a material that carries vomit.

1200 (ii) "Infectious agent" means the same as that term is defined in Section 26-6-2.

1201 (b) Terms defined in Section 76-1-101.5 apply to this section.

1202 (2) ~~[Any person who]~~ An actor commits propelling a bodily substance or material if the
1203 actor knowingly or intentionally throws or otherwise propels ~~[any]~~ a bodily substance or
1204 material ~~[listed under Subsection (1)]~~ at another ~~[person is guilty of a class B misdemeanor,~~
1205 ~~except as provided in Subsection (3)]~~ individual.

1206 (3) (a) A violation of ~~[this section]~~ Subsection (2) is a class B misdemeanor.

1207 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A

1208 misdemeanor if ~~[the substance or material propelled is listed in Subsection (1), and]~~:

1209 ~~[(a)]~~ (i) ~~[if]~~ the bodily substance or material is the ~~[person's]~~ actor's saliva~~;~~ and the

1210 ~~[person]~~ actor knows ~~[he or she]~~ the actor is infected with HIV, hepatitis B, or hepatitis C; or

1211 ~~[(b)]~~ (ii) the bodily substance or material comes into contact with any portion of the

1212 other ~~[person's]~~ individual's face, including the eyes or mouth, or comes into contact with any

1213 open wound on the other ~~[person's]~~ individual's body.

1214 (4) If an offense committed under this section amounts to an offense subject to a

1215 greater penalty under another provision of state law than under this section, this section does

1216 not prohibit prosecution and sentencing for the more serious offense.

1217 Section 28. Section **76-5-103** is amended to read:

1218 **76-5-103. Aggravated assault -- Penalties.**

1219 ~~[(1) Aggravated assault is an actor's conduct.]~~

1220 ~~[(a) that is:]~~

1221 (1) (a) As used in this section, "targeting a law enforcement officer" means the same as

1222 that term is defined in Section 76-5-202.

1223 (b) Terms defined in Section 76-1-101.5 apply to this section.

1224 (2) An actor commits aggravated assault if the actor:

1225 (a) (i) ~~[an attempt]~~ attempts, with unlawful force or violence, to do bodily injury to

1226 another;

1227 (ii) makes a threat, accompanied by a show of immediate force or violence, to do

1228 bodily injury to another; or

1229 (iii) commits an act, committed with unlawful force or violence, that causes bodily

1230 injury to another or creates a substantial risk of bodily injury to another; and

1231 (b) ~~[that]~~ includes in the actor's conduct under Subsection (2)(a) the use of:

1232 (i) a dangerous weapon ~~[as defined in Section 76-1-601];~~

1233 (ii) any act that impedes the breathing or the circulation of blood of another ~~[person]~~

1234 individual by the actor's use of unlawful force or violence that is likely to produce a loss of

1235 consciousness by:

1236 (A) applying pressure to the neck or throat of ~~[a person]~~ an individual; or

1237 (B) obstructing the nose, mouth, or airway of ~~[a person]~~ an individual; or

1238 (iii) other means or force likely to produce death or serious bodily injury.

1239 ~~[(2)]~~ (3) (a) ~~[Any act under this section is punishable as]~~ A violation of Subsection (2)
1240 is a third degree felony~~[- except that an act under this section is punishable as a second degree~~
1241 ~~felony if:]~~.

1242 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
1243 felony if:

1244 (i) the act results in serious bodily injury; or

1245 (ii) an act under Subsection ~~[(1)]~~ (2)(b)(ii) produces a loss of consciousness.

1246 ~~[(b) Aggravated assault that is a violation of Section 76-5-210, Targeting a law~~
1247 ~~enforcement officer, and results in serious bodily injury is a first degree felony.]~~

1248 (c) Notwithstanding Subsections (3)(a) and (b), a violation of Subsection (2) is a first
1249 degree felony if the conduct constitutes targeting a law enforcement officer and results in
1250 serious bodily injury.

1251 Section 29. Section **76-5-103.5** is amended to read:

1252 **76-5-103.5. Aggravated assault by prisoner.**

1253 ~~[Any prisoner who commits aggravated assault is guilty of:]~~

1254 ~~[(1)-a]~~ (1) (a) As used in this section, "aggravated assault" means an offense under
1255 Section 76-5-103.

1256 (b) Terms defined in Section 76-1-101.5 apply to this section.

1257 (2) An actor commits aggravated assault by prisoner if the actor:

1258 (a) is a prisoner; and

1259 (b) commits aggravated assault.

1260 (3) (a) A violation of Subsection (2) is a second degree felony~~[if no serious bodily~~
1261 ~~injury was intentionally caused, or].~~

1262 ~~[(2)]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a first
1263 degree felony if serious bodily injury was intentionally caused.

1264 Section 30. Section **76-5-104** is amended to read:

1265 **76-5-104. Consensual altercation.**

1266 (1) As used in this section, "ultimate fighting match" means the same as that term is
1267 defined in Section 76-9-705.

1268 (2) In any prosecution for criminal homicide under Part 2, Criminal Homicide, or
1269 assault as that offense is described in Section 76-5-102, it is no defense to the prosecution that

1270 the defendant was a party to any duel, mutual combat, or other consensual altercation if during
 1271 the course of the duel, combat, or altercation;

1272 (a) any dangerous weapon [~~as defined in Section 76-1-601~~] was used; or [if]

1273 (b) the defendant was engaged in an ultimate fighting match [~~as defined in Section~~
 1274 ~~76-9-705~~].

1275 Section 31. Section **76-5-105** is amended to read:

1276 **76-5-105. Mayhem.**

1277 (1) Terms defined in Section 76-1-101.5 apply to this section.

1278 [~~(1) Every person who~~] (2) An actor commits mayhem if the actor unlawfully and
 1279 intentionally;

1280 (a) deprives [~~a human being~~] an individual of a member of [~~his~~] the individual's body[;
 1281 or];

1282 (b) disables or renders [it] useless[~~, or who~~] a member of an individual's body;

1283 (c) cuts out or disables [~~the~~] an individual's tongue[;];

1284 (d) puts out an individual's eye[;]; or

1285 (e) slits [~~the~~] an individual's nose, ear, or lip[~~, is guilty of mayhem~~].

1286 [~~(2) Mayhem is a felony of the second degree.~~]

1287 (3) A violation of Subsection (2) is a second degree felony.

1288 Section 32. Section **76-5-106** is amended to read:

1289 **76-5-106. Harassment.**

1290 [~~(1) A person is guilty of~~]

1291 (1) Terms defined in Section 76-1-101.5 apply to this section.

1292 (2) An actor commits harassment if, with intent to frighten or harass another, [~~he~~] the
 1293 actor communicates a written or recorded threat to commit [~~any~~] a violent felony.

1294 [~~(2) Harassment~~] (3) A violation of Subsection (2) is a class B misdemeanor.

1295 Section 33. Section **76-5-106.5** is amended to read:

1296 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law**
 1297 **enforcement officer.**

1298 (1) (a) As used in this section:

1299 [~~(a)~~] (i) "Course of conduct" means two or more acts directed at or toward a specific
 1300 [~~person~~] individual, including:

1301 ~~[(f)]~~ (A) acts in which the actor follows, monitors, observes, photographs, surveils,
1302 threatens, or communicates to or about ~~[a person]~~ an individual, or interferes with ~~[a person's]~~
1303 an individual's property:

1304 ~~[(A)]~~ (I) directly, indirectly, or through any third party; and

1305 ~~[(B)]~~ (II) by any action, method, device, or means; or

1306 ~~[(ii)]~~ (B) when the actor engages in any of the following acts or causes someone else to
1307 engage in any of these acts:

1308 ~~[(A)]~~ (I) approaches or confronts ~~[a person]~~ an individual;

1309 ~~[(B)]~~ (II) appears at the ~~[person's]~~ individual's workplace or contacts the ~~[person's]~~
1310 individual's employer or coworkers;

1311 ~~[(C)]~~ (III) appears at ~~[a person's]~~ an individual's residence or contacts ~~[a person's]~~ an
1312 individual's neighbors, or enters property owned, leased, or occupied by ~~[a person]~~ an
1313 individual;

1314 ~~[(D)]~~ (IV) sends material by any means to the ~~[person]~~ individual or for the purpose of
1315 obtaining or disseminating information about or communicating with the ~~[person]~~ individual to
1316 a member of the ~~[person's]~~ individual's family or household, employer, coworker, friend, or
1317 associate of the ~~[person]~~ individual;

1318 ~~[(E)]~~ (V) places an object on or delivers an object to property owned, leased, or
1319 occupied by ~~[a person]~~ an individual, or to the ~~[person's]~~ individual's place of employment with
1320 the intent that the object be delivered to the ~~[person]~~ individual; or

1321 ~~[(F)]~~ (VI) uses a computer, the Internet, text messaging, or any other electronic means
1322 to commit an act that is a part of the course of conduct.

1323 ~~[(b)]~~ (ii) "Emotional distress" means significant mental or psychological suffering,
1324 whether or not medical or other professional treatment or counseling is required.

1325 ~~[(c)]~~ (iii) "Immediate family" means a spouse, parent, child, sibling, or any other
1326 ~~[person]~~ individual who regularly resides in the household or who regularly resided in the
1327 household within the prior six months.

1328 ~~[(d)]~~ (iv) "Reasonable person" means a reasonable person in the victim's
1329 circumstances.

1330 ~~[(e)]~~ (v) "Stalking" means an offense as described in Subsection (2)~~[-or-(3)]~~.

1331 ~~[(f)]~~ (vi) "Text messaging" means a communication in the form of electronic text or

1332 one or more electronic images sent by the actor from a telephone or computer to another
 1333 [~~person's~~] individual's telephone or computer by addressing the communication to the
 1334 recipient's telephone number.

1335 (b) Terms defined in Section 76-1-101.5 apply to this section.

1336 (2) [~~A person is guilty of stalking who~~] An actor commits stalking if the actor
 1337 intentionally or knowingly;

1338 (a) engages in a course of conduct directed at a specific [~~person~~] individual and knows
 1339 or should know that the course of conduct would cause a reasonable person:

1340 [~~(a)~~] (i) to fear for the [~~person's~~] individual's own safety or the safety of a third [~~person~~]
 1341 individual; or

1342 [~~(b)~~] (ii) to suffer other emotional distress[.]; or

1343 [~~(3) A person is guilty of stalking who intentionally or knowingly~~]

1344 (b) violates:

1345 [~~(a)~~] (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking
 1346 Injunctions; or

1347 [~~(b)~~] (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7,
 1348 Part 9, Criminal Stalking Injunctions.

1349 [~~(4) In any prosecution under this section, it is not a defense that the actor:~~]

1350 [~~(a) was not given actual notice that the course of conduct was unwanted; or~~]

1351 [~~(b) did not intend to cause the victim fear or other emotional distress.~~]

1352 [~~(5) An offense of stalking may be prosecuted under this section in any jurisdiction~~
 1353 ~~where one or more of the acts that is part of the course of conduct was initiated or caused an~~
 1354 ~~effect on the victim.~~]

1355 [~~(6) Stalking is a class A misdemeanor.~~]

1356 (3) (a) A violation of Subsection (2) is a class A misdemeanor:

1357 [~~(a)~~] (i) upon the [~~offender's~~] actor's first violation of Subsection (2); or

1358 [~~(b)~~] (ii) if the [~~offender~~] actor violated a stalking injunction issued under Title 78B,
 1359 Chapter 7, Part 7, Civil Stalking Injunctions.

1360 [~~(7) Stalking~~] (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a
 1361 third degree felony if the [~~offender~~] actor:

1362 [~~(a)~~] (i) has been previously convicted of an offense of stalking;

1363 ~~[(b)]~~ (ii) has been previously convicted in another jurisdiction of an offense that is
1364 substantially similar to the offense of stalking;

1365 ~~[(c)]~~ (iii) has been previously convicted of any felony offense in Utah or of any crime
1366 in another jurisdiction which if committed in Utah would be a felony, in which the victim of
1367 the stalking offense or a member of the victim's immediate family was also a victim of the
1368 previous felony offense;

1369 ~~[(d)]~~ (iv) violated a permanent criminal stalking injunction issued under Title 78B,
1370 Chapter 7, Part 9, Criminal Stalking Injunctions; or

1371 ~~[(e)]~~ (v) has been or is at the time of the offense a cohabitant, as defined in Section
1372 78B-7-102, of the victim.

1373 ~~[(8) Stalking]~~ (c) Notwithstanding Subsections (3)(a) and (b), a violation of
1374 Subsection (2) is a second degree felony if the [offender] actor:

1375 ~~[(a)]~~ (i) used a dangerous weapon ~~[as defined in Section 76-1-601]~~ or used other means
1376 or force likely to produce death or serious bodily injury, in the commission of the crime of
1377 stalking;

1378 ~~[(b)]~~ (ii) has been previously convicted two or more times of the offense of stalking;

1379 ~~[(c)]~~ (iii) has been convicted two or more times in another jurisdiction or jurisdictions
1380 of offenses that are substantially similar to the offense of stalking;

1381 ~~[(d)]~~ (iv) has been convicted two or more times, in any combination, of offenses under
1382 Subsection ~~[(7)(a), (b), or (c)]~~ (3)(b)(i), (ii), or (iii);

1383 ~~[(e)]~~ (v) has been previously convicted two or more times of felony offenses in Utah or
1384 of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be
1385 felonies, in which the victim of the stalking was also a victim of the previous felony offenses;
1386 or

1387 ~~[(f)]~~ (vi) has been previously convicted of an offense under Subsection ~~[(7)(d) or (e)]~~
1388 (3)(b)(iv) or (v).

1389 (4) In a prosecution under this section, it is not a defense that the actor:

1390 (a) was not given actual notice that the course of conduct was unwanted; or

1391 (b) did not intend to cause the victim fear or other emotional distress.

1392 (5) An offense of stalking may be prosecuted under this section in any jurisdiction

1393 where one or more of the acts that is part of the course of conduct was initiated or caused an

1394 effect on the victim.

1395 ~~[(9)]~~ (6) (a) A permanent criminal stalking injunction limiting the contact between the
1396 ~~[defendant]~~ actor and victim may be filed in accordance with Section 78B-7-902.

1397 (b) This section does not preclude the filing of criminal information for stalking based
1398 on the same act which is the basis for the violation of the stalking injunction issued under Title
1399 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction
1400 issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

1401 ~~[(10)]~~ (7) (a) A law enforcement officer who responds to an allegation of stalking shall
1402 use all reasonable means to protect the victim and prevent further violence, including:

1403 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for
1404 the safety of the victim and any family or household member;

1405 (ii) confiscating the weapon or weapons involved in the alleged stalking;

1406 (iii) making arrangements for the victim and any child to obtain emergency housing or
1407 shelter;

1408 (iv) providing protection while the victim removes essential personal effects;

1409 (v) arranging, facilitating, or providing for the victim and any child to obtain medical
1410 treatment; and

1411 (vi) arranging, facilitating, or providing the victim with immediate and adequate notice
1412 of the rights of victims and of the remedies and services available to victims of stalking, in
1413 accordance with Subsection ~~[(10)]~~ (7)(b).

1414 (b) (i) A law enforcement officer shall give written notice to the victim in simple
1415 language, describing the rights and remedies available under this section and Title 78B,
1416 Chapter 7, Part 7, Civil Stalking Injunctions.

1417 (ii) The written notice shall also include:

1418 (A) a statement that the forms needed in order to obtain a stalking injunction are
1419 available from the court clerk's office in the judicial district where the victim resides or is
1420 temporarily domiciled; and

1421 (B) a list of shelters, services, and resources available in the appropriate community,
1422 together with telephone numbers, to assist the victim in accessing any needed assistance.

1423 (c) If a weapon is confiscated under this Subsection ~~[(10)]~~ (7), the law enforcement
1424 agency shall return the weapon to the individual from whom the weapon is confiscated if a

1425 stalking injunction is not issued or once the stalking injunction is terminated.

1426 Section 34. Section **76-5-107** is amended to read:

1427 **76-5-107. Threat of violence -- Penalty.**

1428 (1) Terms defined in Section 76-1-101.5 apply to this section.

1429 ~~[(1) A person]~~ (2) (a) An actor commits a threat of violence if the actor:

1430 ~~[(a) the person]~~ (i) (A) threatens to commit any offense involving bodily injury, death,
1431 or substantial property damage~~[-];~~ and

1432 (B) acts with intent to place ~~[a person]~~ an individual in fear of imminent serious bodily
1433 injury, substantial bodily injury, or death; or

1434 ~~[(b) the person]~~ (ii) makes a threat, accompanied by a show of immediate force or
1435 violence, to do bodily injury to ~~[another]~~ an individual.

1436 (b) A threat under this section may be express or implied.

1437 ~~[(2)]~~ (3) (a) A violation of ~~[this section]~~ Subsection (2) is a class B misdemeanor.

1438 (b) An actor who commits an offense under this section is subject to punishment for
1439 that offense, in addition to any other offense committed, including the carrying out of the
1440 threatened act.

1441 (c) In addition to any other penalty authorized by law, a court shall order an actor
1442 convicted of a violation of this section to reimburse any federal, state, or local unit of
1443 government, or any private business, organization, individual, or entity for all expenses and
1444 losses incurred in responding to the violation, unless the court states on the record the reasons
1445 why the reimbursement would be inappropriate.

1446 ~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt to
1447 or was incapable of carrying out the threat.

1448 ~~[(4) A threat under this section may be express or implied.]~~

1449 ~~[(5) A person who commits an offense under this section is subject to punishment for~~
1450 ~~that offense, in addition to any other offense committed, including the carrying out of the~~
1451 ~~threatened act.]~~

1452 ~~[(6) In addition to any other penalty authorized by law, a court shall order any person~~
1453 ~~convicted of any violation of this section to reimburse any federal, state, or local unit of~~
1454 ~~government, or any private business, organization, individual, or entity for all expenses and~~
1455 ~~losses incurred in responding to the violation, unless the court states on the record the reasons~~

1456 ~~why the reimbursement would be inappropriate.]~~

1457 Section 35. Section ~~76-5-107.1~~ is amended to read:

1458 **76-5-107.1. Threats against schools.**

1459 (1) (a) As used in this section~~["school"]~~:

1460 (i) "Hoax weapon of mass destruction" means the same as that term is defined in
1461 Section 76-10-401.

1462 (ii) "School" means a preschool or a public or private elementary or secondary school.

1463 (b) Terms defined in Section 76-1-101.5 apply to this section.

1464 (2) An ~~[individual]~~ actor is guilty of making a threat against a school if the ~~[individual]~~
1465 actor threatens in person or via electronic means, either with real intent or as an intentional
1466 hoax, to commit any offense involving bodily injury, death, or substantial property damage~~;~~
1467 and the actor:

1468 (a) threatens the use of a firearm or weapon or hoax weapon of mass destruction~~["as~~
1469 ~~defined in Section 76-10-401]~~;

1470 (b) acts with intent to:

1471 (i) disrupt the regular schedule of the school or influence or affect the conduct of
1472 students, employees, or the general public at the school;

1473 (ii) prevent or interrupt the occupancy of the school or a portion of the school, or a
1474 facility or vehicle used by the school; or

1475 (iii) intimidate or coerce students or employees of the school; or

1476 (c) causes an official or volunteer agency organized to deal with emergencies to take
1477 action due to the risk to the school or general public.

1478 (3) (a) (i) A violation of Subsection (2)(a), (b)(i), or (b)(iii) is a class A misdemeanor.

1479 ~~[(b)]~~ (ii) A violation of Subsection (2)(b)(ii) is a class B misdemeanor.

1480 ~~[(c)]~~ (iii) A violation of Subsection (2)(c) is a class C misdemeanor.

1481 ~~[(4) Counseling for the minor and the minor's family may be made available through~~
1482 ~~state and local health department programs.]~~

1483 ~~[(5) It is not a defense to this section that the individual did not attempt to carry out or~~
1484 ~~was incapable of carrying out the threat.]~~

1485 ~~[(6) In addition to any other penalty authorized by law, a court shall order an individual~~
1486 ~~convicted of a violation of this section to pay restitution to any federal, state, or local unit of~~

~~government, or any private business, organization, individual, or entity for expenses and losses incurred in responding to the threat, unless the court states on the record the reasons why the reimbursement would be inappropriate. Restitution ordered in the case of a minor adjudicated for a violation of this section shall be determined in accordance with Section 80-6-710.]~~

(b) (i) In addition to any other penalty authorized by law, a court shall order an actor convicted of a violation of this section to pay restitution to any federal, state, or local unit of government, or any private business, organization, individual, or entity for expenses and losses incurred in responding to the threat, unless the court states on the record the reasons why the reimbursement would be inappropriate.

(ii) Restitution ordered in the case of a minor adjudicated for a violation of this section shall be determined in accordance with Section 80-6-710.

(4) It is not a defense to this section that the actor did not attempt to carry out or was incapable of carrying out the threat.

~~(7)~~ (5) (a) A violation of this section shall be reported to the local law enforcement agency.

(b) If the [individual] actor alleged to have violated this section is a minor, the minor may be referred to the juvenile court.

(6) Counseling for the minor and the minor's family may be made available through state and local health department programs.

Section 36. Section ~~76-5-107.3~~ is amended to read:

76-5-107.3. Threat of terrorism -- Penalty.

(1) (a) As used in this section:

(i) "Hoax weapon of mass destruction" means the same as that term is defined in Section 76-10-401.

(ii) "Weapon of mass destruction" means the same as that term is defined in Section 76-10-401.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~(1) A person~~ (2) (a) An actor commits a threat of terrorism if the ~~[person]~~ actor threatens to commit ~~[any]~~ an offense involving bodily injury, death, or substantial property damage~~[-]~~ and the actor:

~~(a) (i)~~ (i) (A) threatens the use of a weapon of mass destruction~~[-, as defined in~~

1518 ~~Section 76-10-401~~]; or

1519 ~~[(ii)]~~ (B) threatens the use of a hoax weapon of mass destruction~~[, as defined in Section~~

1520 ~~76-10-401]~~; or

1521 ~~[(b)]~~ (ii) acts with intent to:

1522 ~~[(i)]~~ (A) intimidate or coerce a civilian population or to influence or affect the conduct

1523 of a government or a unit of government;

1524 ~~[(iii)]~~ (B) prevent or interrupt the occupation of a building or a portion of the building, a

1525 place to which the public has access, or a facility or vehicle of public transportation operated by

1526 a common carrier; or

1527 ~~[(iii)]~~ (C) cause an official or volunteer agency organized to deal with emergencies to

1528 take action due to the ~~[person's]~~ actor's conduct posing a serious and substantial risk to the

1529 general public.

1530 (b) A threat under this section may be express or implied.

1531 ~~[(2)]~~ (3) (a) (i) A violation of Subsection ~~[(1)(a) or (1)(b)(i)]~~ (2)(a)(i) or (2)(a)(ii)(A) is

1532 a second degree felony.

1533 ~~[(b)]~~ (ii) A violation of Subsection ~~[(1)(b)(ii)]~~ (2)(a)(ii)(B) is a third degree felony.

1534 ~~[(c)]~~ (iii) A violation of Subsection ~~[(1)(b)(iii)]~~ (2)(a)(ii)(C) is a class B misdemeanor.

1535 (b) An actor who commits an offense under this section is subject to punishment for

1536 that offense, in addition to any other offense committed, including the carrying out of the

1537 threatened act.

1538 (c) In addition to any other penalty authorized by law, a court shall order an actor

1539 convicted of a violation of this section to reimburse any federal, state, or local unit of

1540 government, or any private business, organization, individual, or entity for all expenses and

1541 losses incurred in responding to the violation, unless the court states on the record the reasons

1542 why the reimbursement would be inappropriate.

1543 ~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt to

1544 carry out or was incapable of carrying out the threat.

1545 ~~[(4) A threat under this section may be express or implied.]~~

1546 ~~[(5) A person who commits an offense under this section is subject to punishment for~~

1547 ~~that offense, in addition to any other offense committed, including the carrying out of the~~

1548 ~~threatened act.]~~

~~[(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.]~~

Section 37. Section ~~76-5-107.5~~ is amended to read:

76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person is guilty of]~~ (2) An actor commits hazing if ~~[that person]~~ the actor intentionally, knowingly, or recklessly commits an act or causes another to commit an act that:

(a) (i) endangers the mental or physical health or safety of ~~[another]~~ an individual;

(ii) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(iii) involves consumption of any food, alcoholic product, drug, or other substance or any other physical activity that endangers the mental or physical health and safety of an individual; or

(iv) involves any activity that would subject the individual to extreme mental stress, such as sleep deprivation, extended isolation from social contact, or conduct that subjects another to extreme embarrassment, shame, or humiliation; and

(b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in, or as a condition for continued membership in any organization; or

(ii) if the actor knew that the ~~[victim]~~ individual is a member of or candidate for membership with a school team or school organization to which the actor belongs or did belong within the preceding two years.

~~[(2) It is not a defense to prosecution of hazing that a person under 21, against whom the hazing was directed, consented to or acquiesced in the hazing activity.]~~

~~[(3) An actor who hazes another is guilty of a:]~~

(3) (a) A violation of Subsection (2) is a class B misdemeanor [except as provided in Subsection (3)(b), (c), (d), or (e)].

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A

1580 misdemeanor if the act involves:

1581 (i) the operation or other use of a motor vehicle;

1582 (ii) the consumption of an alcoholic product as defined in Section 32B-1-102; or

1583 (iii) the consumption of a drug or a substance as defined in Section 76-5-113[;].

1584 (c) Notwithstanding Subsections (3)(a) or (b), a violation of Subsection (2) is a third

1585 degree felony if the act involves the use of a dangerous weapon [~~as defined in Section~~

1586 ~~76-1-601;~~].

1587 (d) Notwithstanding Subsections (3)(a), (b), and (c), a violation of Subsection (2) is a

1588 third degree felony if the hazing results in serious bodily injury to [~~a person; or~~] an individual.

1589 (e) Notwithstanding Subsections (3)(a), (b), (c), and (d), a violation of Subsection (2) is

1590 a second degree felony if hazing under Subsection (3)(d) involves the use of a dangerous

1591 weapon [~~as defined in Section 76-1-601~~].

1592 (4) (a) A person who in good faith reports or participates in reporting of an alleged

1593 hazing is not subject to any civil or criminal liability regarding the reporting.

1594 (b) It is not a defense to prosecution of hazing that an individual under 21 years old,

1595 against whom the hazing was directed, consented to or acquiesced in the hazing activity.

1596 (5) (a) This section does not apply to military training or other official military

1597 activities.

1598 (b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

1599 (6) (a) A prosecution under this section does not bar a prosecution of the actor for:

1600 (i) any other offense for which the actor may be liable as a party for conduct committed

1601 by the [~~person~~] individual hazed; or

1602 (ii) any offense, caused in the course of the hazing, that the actor commits against the

1603 [~~person who is~~] individual hazed.

1604 (b) Under Subsection (6)(a)(i) [~~a person~~] an actor may be separately punished, both for

1605 the hazing offense and the conduct committed by the [~~person~~] individual hazed.

1606 (c) Under Subsection (6)(a)(ii) [~~a person~~] an actor may not be punished both for hazing

1607 and for the other offense, but shall be punished for the offense carrying the greater maximum

1608 penalty.

1609 Section 38. Section **76-5-108** is amended to read:

1610 **76-5-108. Violation of protective order.**

~~[(1) Any person who]~~ (1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits violation of protective order if the actor:

(a) is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under ~~[the following who]~~:

(i) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; and

(ii) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;

(iii) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or

(iv) Title 80, Utah Juvenile Code;

(b) intentionally or knowingly violates that order after having been properly served or having been present, in person or through court video conferencing, when the order was issued[;].

(3) A violation of Subsection (2) is ~~[guilty of]~~ a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act[;].

~~[(a) Title 80, Utah Juvenile Code;]~~

~~[(b) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;]~~

~~[(c) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or]~~

~~[(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.]~~

~~[(2)]~~ (4) Violation of an order ~~[as]~~ described in Subsection ~~[(1)]~~ (2) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

Section 39. Section **76-5-109** is amended to read:

76-5-109. Child abuse.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Child" means ~~[a human being who is under]~~ an individual who is younger than 18 years ~~[of age]~~ old.

~~[(b) (i) "Child abandonment" means that a parent or legal guardian of a child:]~~

~~[(A) intentionally ceases to maintain physical custody of the child;]~~

~~[(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and]~~

1642 ~~[(C) (f) intentionally fails to provide the child with food, shelter, or clothing;]~~
 1643 ~~[(H) manifests an intent to permanently not resume physical custody of the child; or]~~
 1644 ~~[(HH) for a period of at least 30 days:]~~
 1645 ~~[(Aa) intentionally fails to resume physical custody of the child; and]~~
 1646 ~~[(Bb) fails to manifest a genuine intent to resume physical custody of the child:]~~
 1647 ~~[(ii) "Child abandonment" does not include:]~~
 1648 ~~[(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802;~~
 1649 ~~or]~~
 1650 ~~[(B) giving legal consent to a court order for termination of parental rights:]~~
 1651 ~~[(f) in a legal adoption proceeding; or]~~
 1652 ~~[(H) in a case where a petition for the termination of parental rights, or the termination~~
 1653 ~~of a guardianship, has been filed:]~~
 1654 ~~[(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in~~
 1655 ~~Section 76-5-109.1:]~~
 1656 ~~[(d) "Enterprise" is as defined in Section 76-10-1602.]~~
 1657 ~~[(e)]~~ (ii) "Physical injury" means an injury to or condition of a child which impairs the
 1658 physical condition of the child, including:
 1659 (i) (A) a bruise or other contusion of the skin;
 1660 (ii) (B) a minor laceration or abrasion;
 1661 (iii) (C) failure to thrive or malnutrition; or
 1662 (iv) (D) any other condition which imperils the child's health or welfare and [which]
 1663 that is not a serious physical injury ~~[as defined in Subsection (1)(f)]~~.
 1664 ~~[(f) (i)]~~ (iii) (A) "Serious physical injury" means any physical injury or set of injuries
 1665 that:
 1666 ~~[(A)]~~ (I) seriously impairs the child's health;
 1667 ~~[(B)]~~ (II) involves physical torture;
 1668 ~~[(C)]~~ (III) causes serious emotional harm to the child; or
 1669 ~~[(D)]~~ (IV) involves a substantial risk of death to the child.
 1670 (iii) (B) "Serious physical injury" includes:
 1671 ~~[(A)]~~ (I) fracture of any bone or bones;
 1672 ~~[(B)]~~ (II) intracranial bleeding, swelling or contusion of the brain, whether caused by

1673 blows, shaking, or causing the child's head to impact with an object or surface;
 1674 ~~[(E)]~~ (III) any burn, including burns inflicted by hot water, or those caused by placing a
 1675 hot object upon the skin or body of the child;
 1676 ~~[(D)]~~ (IV) any injury caused by use of a dangerous weapon ~~[as defined in Section~~
 1677 ~~76-1-601];~~
 1678 ~~[(E)]~~ (V) any combination of two or more physical injuries inflicted by the same
 1679 person, either at the same time or on different occasions;
 1680 ~~[(F)]~~ (VI) any damage to internal organs of the body;
 1681 ~~[(G)]~~ (VII) any conduct toward a child that results in severe emotional harm, severe
 1682 developmental delay or intellectual disability, or severe impairment of the child's ability to
 1683 function;
 1684 ~~[(H)]~~ (VIII) any injury that creates a permanent disfigurement or protracted loss or
 1685 impairment of the function of a bodily member, limb, or organ;
 1686 ~~[(I)]~~ (IX) any impediment of the breathing or the circulation of blood by application of
 1687 pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely to
 1688 produce a loss of consciousness;
 1689 ~~[(J)]~~ (X) any conduct that results in starvation or failure to thrive or malnutrition that
 1690 jeopardizes the child's life; or
 1691 ~~[(K)]~~ (XI) unconsciousness caused by the unlawful infliction of a brain injury or
 1692 unlawfully causing any deprivation of oxygen to the brain.
 1693 (b) Terms defined in Section 76-1-101.5 apply to this section.
 1694 ~~[(2) Any person who inflicts upon a child serious physical injury or, having the care or~~
 1695 ~~custody of such child, causes or permits another to inflict serious physical injury upon a child is~~
 1696 ~~guilty of an offense as follows:]~~
 1697 ~~[(a) if done intentionally or knowingly, the offense is a felony of the second degree;]~~
 1698 ~~[(b) if done recklessly, the offense is a felony of the third degree; or]~~
 1699 ~~[(c) if done with criminal negligence, the offense is a class A misdemeanor.]~~
 1700 ~~[(3) Any person who]~~ (2) An actor commits child abuse if the actor:
 1701 (a) inflicts upon a child physical injury [or]; or
 1702 (b) having the care or custody of such child, causes or permits another to inflict
 1703 physical injury upon a child [is guilty of an offense as follows:].

1704 (3) (a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or
 1705 knowingly[, ~~the offense is a class A misdemeanor;~~].

1706 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly[, ~~the~~
 1707 ~~offense is a class B misdemeanor; or~~].

1708 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal
 1709 negligence[, ~~the offense is a class C misdemeanor~~].

1710 ~~[(4) A person who commits child abandonment, or encourages or causes another to~~
 1711 ~~commit child abandonment, or an enterprise that encourages, commands, or causes another to~~
 1712 ~~commit child abandonment, is:]~~

1713 ~~[(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree, or]~~

1714 ~~[(b) guilty of a felony of the second degree, if, as a result of the child abandonment:]~~

1715 ~~[(i) the child suffers a serious physical injury; or]~~

1716 ~~[(ii) the person or enterprise receives, directly or indirectly, any benefit.]~~

1717 ~~[(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order~~
 1718 ~~the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and~~
 1719 ~~prosecuting the offense and the costs of securing any forfeiture provided for under Subsection~~
 1720 ~~(5)(b).]~~

1721 ~~[(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to~~
 1722 ~~criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.]~~

1723 ~~[(6)]~~ (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
 1724 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
 1725 practices of an established church or religious denomination of which the parent or legal
 1726 guardian is a member or adherent [~~shall~~] may not, for that reason alone, be considered to have
 1727 committed an offense under this section.

1728 ~~[(7)]~~ (b) A parent or guardian of a child does not violate this section by selecting a
 1729 treatment option for [~~the~~] a medical condition of the child, if the treatment option is one that a
 1730 reasonable parent or guardian would believe to be in the best interest of the child.

1731 ~~[(8) A person]~~ (c) An actor is not guilty of an offense under this section for conduct
 1732 that constitutes:

1733 ~~[(a)]~~ (i) reasonable discipline or management of a child, including withholding
 1734 privileges;

1735 ~~[(b)]~~ (ii) conduct described in Section 76-2-401; or
1736 ~~[(c)]~~ (iii) the use of reasonable and necessary physical restraint or force on a child:
1737 ~~[(i)]~~ (A) in self-defense;
1738 ~~[(ii)]~~ (B) in defense of others;
1739 ~~[(iii)]~~ (C) to protect the child; or
1740 ~~[(iv)]~~ (D) to remove a weapon in the possession of a child for any of the reasons
1741 described in Subsections ~~[(8)(c)(i) through (iii)]~~ (4)(c)(iii)(A) through (C).

1742 Section 40. Section **76-5-109.2** is enacted to read:

1743 **76-5-109.2. Aggravated child abuse.**

1744 (1) (a) As used in this section:

1745 (i) "Child" means the same as that term is defined in Section 76-5-109.

1746 (ii) "Serious physical injury" means the same as that term is defined in Section
1747 76-5-109.

1748 (b) Terms defined in Section 76-1-101.5 apply to this section.

1749 (2) An actor commits aggravated child abuse if the actor:

1750 (a) inflicts upon a child serious physical injury; or

1751 (b) having the care or custody of such child, causes or permits another to inflict serious
1752 physical injury upon a child.

1753 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
1754 knowingly.

1755 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

1756 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal
1757 negligence.

1758 (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
1759 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1760 practices of an established church or religious denomination of which the parent or legal
1761 guardian is a member or adherent may not, for that reason alone, be considered to have
1762 committed an offense under this section.

1763 (b) A parent or guardian of a child does not violate this section by selecting a treatment
1764 option for the medical condition of the child, if the treatment option is one that a reasonable
1765 parent or guardian would believe to be in the best interest of the child.

(c) An actor is not guilty of an offense under this section for conduct that constitutes:

(i) conduct described in Section 76-2-401; or

(ii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (4)(c)(ii)(A) through (C).

Section 41. Section **76-5-109.3** is enacted to read:

76-5-109.3. Child abandonment.

(1) (a) As used in this section:

(i) "Child" means the same as that term is defined in Section 76-5-109.

(ii) (A) "Child abandonment" means that a parent or legal guardian of a child intentionally ceases to maintain physical custody of the child, intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child, and the parent or legal guardian:

(I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days, intentionally fails to resume physical custody of the child and fails to manifest a genuine intent to resume physical custody of the child.

(B) "Child abandonment" does not include:

(I) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(II) giving legal consent to a court order for termination of parental rights in a legal adoption proceeding or in a case in which a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(iii) "Enterprise" means the same as that term is defined in Section 76-10-1602.

(iv) "Serious physical injury" means the same as that term is defined in Section 76-5-109.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits child abandonment if the actor commits child abandonment, or encourages or causes another to commit child abandonment.

(b) An enterprise commits child abandonment if the enterprise encourages, commands, or causes another to commit child abandonment.

(3) (a) (i) A violation of Subsection (2) is a third degree felony.

(ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second degree felony if, as a result of the child abandonment:

(A) the child suffers a serious physical injury; or

(B) the actor or enterprise receives, directly or indirectly, any benefit.

(b) (i) In addition to the penalty described in Subsection (3)(a)(ii), the court may order the actor or enterprise described in Subsection (3)(a)(ii)(B) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (3)(b)(ii).

(ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is subject to criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

(4) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent may not, for that reason alone, be considered to have committed an offense under this section.

(b) An actor is not guilty of an offense under this section for conduct that constitutes:

(i) reasonable discipline or management of a child, including withholding privileges; or

(ii) conduct described in Section 76-2-401.

Section 42. Section **76-5-110** is amended to read:

76-5-110. Abuse or neglect of a child with a disability.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Abuse" means:

~~[(i)]~~ (A) inflicting physical injury~~[, as that term is defined in Section 76-5-109];~~

~~[(ii)]~~ (B) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury~~[, as that term is defined in Section 76-5-109]; or~~

~~[(iii)]~~ (C) unreasonable confinement.

~~[(b)]~~ (ii) "Caretaker" means:

~~[(i)]~~ (A) any parent, legal guardian, or other person having under that person's care and

1828 custody a child with a disability; or

1829 ~~[(ii)]~~ (B) any person, corporation, or public institution that has assumed by contract or
 1830 court order the responsibility to provide food, shelter, clothing, medical, and other necessities
 1831 to a child with a disability.

1832 ~~[(c)]~~ (iii) "Child with a disability" means ~~[any person]~~ an individual under 18 years old
 1833 who is impaired because of mental illness, mental deficiency, physical illness or disability, or
 1834 other cause, to the extent that the ~~[person]~~ individual is unable to care for the ~~[person's]~~
 1835 individual's own personal safety or to provide necessities such as food, shelter, clothing, and
 1836 medical care.

1837 ~~[(d)]~~ (iv) "Neglect" means failure by a caretaker to provide care, nutrition, clothing,
 1838 shelter, supervision, or medical care.

1839 (v) "Physical injury" means the same as that term is defined in Section 76-5-109.

1840 (b) Terms defined in Section 76-1-101.5 apply to this section.

1841 (2) ~~[Any caretaker who]~~ An actor commits abuse or neglect of a child with a disability
 1842 if the actor is a caretaker and intentionally, knowingly, or recklessly abuses or neglects a child
 1843 with a disability ~~[is guilty of a third degree felony]~~.

1844 (3) A violation of Subsection (2) is a third degree felony.

1845 ~~[(3)]~~ (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
 1846 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
 1847 practices of an established church or religious denomination of which the parent or legal
 1848 guardian is a member or adherent ~~[shall]~~ may not, for that reason alone, be considered to be in
 1849 violation under this section.

1850 (b) Subject to Section 80-3-109, the exception under Subsection ~~[(3)]~~ (4)(a) does not
 1851 preclude a court from ordering medical services from a physician licensed to engage in the
 1852 practice of medicine to be provided to the child where there is substantial risk of harm to the
 1853 child's health or welfare if the treatment is not provided.

1854 (c) A caretaker of a child with a disability does not violate this section by selecting a
 1855 treatment option for a medical condition of a child with a disability, if the treatment option is
 1856 one that a reasonable caretaker would believe to be in the best interest of the child with a
 1857 disability.

1858 Section 43. Section **76-5-111** is amended to read:

76-5-111. Abuse of a vulnerable adult -- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

~~[(b)]~~ (ii) "Abuse" means:

~~[(i)]~~ (A) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

~~[(ii)]~~ (B) causing physical injury by knowing or intentional acts or omissions;

~~[(iii)]~~ (C) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the vulnerable adult; or

~~[(iv)]~~ (D) deprivation of life-sustaining treatment, except:

~~[(A)]~~ (I) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

~~[(B)]~~ (II) when informed consent, as defined in this section, has been obtained.

~~[(c)] "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.]~~

~~[(d)]~~ (iii) "Caretaker" means a person or public institution that is entrusted with or assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities for pecuniary gain, by contract, or as a result of friendship, or in a position of trust and confidence with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is under court order to provide care.

~~[(e)] "Deception" means:]~~

~~[(i)] a misrepresentation or concealment:]~~

~~[(A)] of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;]~~

~~[(B)] of the terms of a contract or agreement entered into with a vulnerable adult; or]~~

~~[(C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult, or]~~

~~[(ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.]~~

~~[(f)(i)]~~ (iv) (A) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.

~~[(ii)]~~ (B) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.

~~[(g)]~~ (v) "Elder adult" means an individual 65 years old or older.

~~[(h) "Endeavor" means to attempt or try.]~~

~~[(i)]~~ (vi) "Exploitation" means an offense described in ~~[Subsection (4) or (9) or Section]~~ Section 76-5-111.3, 76-5-111.4, or 76-5b-202.

~~[(j)]~~ (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

~~[(k)]~~ (viii) "Informed consent" means:

~~[(i)]~~ (A) a written expression by the individual or authorized by the individual, stating that the individual fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the individual desires that the services be withdrawn, except that a written expression is valid only if the individual is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or

~~[(ii)]~~ (B) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.

~~[(l) "Intimidation" means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or harm.]~~

~~[(m)(i)]~~ (ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable

1921 adult from having contact with another person, unless the restriction of personal rights is
1922 authorized by court order, by:

1923 [(A)] (I) preventing the vulnerable adult from communicating, visiting, interacting, or
1924 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
1925 calls, contrary to the express wishes of the vulnerable adult, or communicating to a visitor that
1926 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing
1927 that communication to be false;

1928 [(B)] (II) physically restraining the vulnerable adult in order to prevent the vulnerable
1929 adult from meeting with a visitor; or

1930 [(C)] (III) making false or misleading statements to the vulnerable adult in order to
1931 induce the vulnerable adult to refuse to receive communication from visitors or other family
1932 members.

1933 [(ii)] (B) "Isolation" does not include an act:

1934 [(A)] (I) intended in good faith to protect the physical or mental welfare of the
1935 vulnerable adult; or

1936 [(B)] (II) performed pursuant to the treatment plan or instructions of a physician or
1937 other professional advisor of the vulnerable adult.

1938 ~~[(n)] "Lacks capacity to consent" means an impairment by reason of mental illness,~~
1939 ~~developmental disability, organic brain disorder, physical illness or disability, chronic use of~~
1940 ~~drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a~~
1941 ~~vulnerable adult lacks sufficient understanding of the nature or consequences of decisions~~
1942 ~~concerning the adult's person or property.]~~

1943 [(o)] (x) "Neglect" means:

1944 [(i)] (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision,
1945 personal care, or dental or other health care, or failure to provide protection from health and
1946 safety hazards or maltreatment;

1947 [(ii)] (B) failure of a caretaker to provide care to a vulnerable adult in a timely manner
1948 and with the degree of care that a reasonable person in a like position would exercise;

1949 [(iii)] (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
1950 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1951 heating, or other services necessary to maintain the vulnerable adult's well being;

1952 ~~[(iv)]~~ (D) intentional failure by a caretaker to carry out a prescribed treatment plan that
 1953 results or could result in physical injury or physical harm; or

1954 ~~[(v)]~~ (E) abandonment by a caretaker.

1955 ~~[(p)-(i)]~~ (xi) (A) "Physical injury" includes damage to any bodily tissue caused by
 1956 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
 1957 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
 1958 the tissue cannot be restored to a sound and healthy condition.

1959 ~~[(ii)]~~ (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
 1960 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
 1961 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
 1962 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
 1963 serious physical injury as defined in this section.

1964 ~~[(q)]~~ (xii) "Position of trust and confidence" means the position of a person who:

1965 ~~[(i)]~~ (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

1966 ~~[(ii)]~~ (B) is a joint tenant or tenant in common with a vulnerable adult;

1967 ~~[(iii)]~~ (C) has a legal or fiduciary relationship with a vulnerable adult, including a
 1968 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

1969 ~~[(iv)]~~ (D) is a caretaker of a vulnerable adult.

1970 ~~[(r)]~~ (xiii) "Serious physical injury" means any physical injury or set of physical
 1971 injuries that:

1972 ~~[(i)]~~ (A) seriously impairs a vulnerable adult's health;

1973 ~~[(ii)]~~ (B) was caused by use of a dangerous weapon ~~[as defined in Section 76-1-601];~~

1974 ~~[(iii)]~~ (C) involves physical torture or causes serious emotional harm to a vulnerable
 1975 adult; or

1976 ~~[(iv)]~~ (D) creates a reasonable risk of death.

1977 ~~[(s) "Undue influence" occurs when a person:]~~

1978 ~~[(i) uses influence to take advantage of a vulnerable adult's mental or physical~~
 1979 ~~impairment; or]~~

1980 ~~[(ii) uses the person's role, relationship, or power:]~~

1981 ~~[(A) to exploit, or knowingly assist or cause another to exploit, the trust, dependency,~~
 1982 ~~or fear of a vulnerable adult; or]~~

1983 ~~[(B) to gain control deceptively over the decision making of the vulnerable adult.]~~
 1984 ~~[(+)] (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a~~
 1985 ~~mental or physical impairment which substantially affects that individual's ability to:~~
 1986 ~~[(+)] (A) provide personal protection;~~
 1987 ~~[(+)] (B) provide necessities such as food, shelter, clothing, or medical or other health~~
 1988 ~~care;~~
 1989 ~~[(+)] (C) obtain services necessary for health, safety, or welfare;~~
 1990 ~~[(+)] (D) carry out the activities of daily living;~~
 1991 ~~[(+)] (E) manage the adult's own resources; or~~
 1992 ~~[(+)] (F) comprehend the nature and consequences of remaining in a situation of~~
 1993 ~~abuse, neglect, or exploitation.~~
 1994 ~~[(2) Under any circumstances likely to produce death or serious physical injury, a~~
 1995 ~~person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,~~
 1996 ~~having the care or custody of a vulnerable adult, causes or permits that adult's person or health~~
 1997 ~~to be injured, or causes or permits a vulnerable adult to be placed in a situation where the~~
 1998 ~~adult's person or health is endangered, is guilty of the offense of aggravated abuse of a~~
 1999 ~~vulnerable adult as follows:]~~
 2000 ~~[(a) if done intentionally or knowingly, the offense is a second degree felony;]~~
 2001 ~~[(b) if done recklessly, the offense is third degree felony; and]~~
 2002 ~~[(c) if done with criminal negligence, the offense is a class A misdemeanor.]~~
 2003 (b) Terms defined in Section 76-1-101.5 apply to this section.
 2004 ~~[(3)-(a) Under]~~ (2) An actor, including a caretaker, commits abuse of a vulnerable
 2005 adult if the actor, under circumstances other than those likely to produce death or serious
 2006 physical injury~~[-except as provided in Subsection (3)(b), any person, including a caretaker,~~
 2007 ~~who];~~
 2008 (a) causes a vulnerable adult to suffer harm, abuse, or neglect~~[-or];~~
 2009 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
 2010 adult's person or health to be injured, abused, or neglected[-]; or
 2011 (c) causes or permits a vulnerable adult to be placed in a situation ~~[where the]~~ in which
 2012 the vulnerable adult's person or health is endangered~~[-is guilty of the offense of abuse of a~~
 2013 ~~vulnerable adult as follows:].~~

2014 (3) (a) A violation of Subsection (2):
 2015 (i) is a class A misdemeanor if done intentionally or knowingly~~[-, the offense is a class~~
 2016 ~~A misdemeanor];~~
 2017 (ii) is a class B misdemeanor if done recklessly~~[-, the offense is a class B misdemeanor;~~
 2018 ~~and]; or~~
 2019 (iii) is a class C misdemeanor if done with criminal negligence~~[-, the offense is a class~~
 2020 ~~C misdemeanor].~~
 2021 (b) ~~[A]~~ Notwithstanding Subsection (3)(a), a violation of [this Subsection (3)]
 2022 Subsection (2) that is based on isolation of a vulnerable adult is a third degree felony.
 2023 ~~[(4) Except as provided in Subsection (5), a caretaker of a vulnerable adult commits the~~
 2024 ~~offense of personal dignity exploitation of the vulnerable adult if the caretaker intentionally,~~
 2025 ~~knowingly, or recklessly:]~~
 2026 ~~[(a) creates, transmits, or displays a photographic or electronic image or recording of~~
 2027 ~~the vulnerable adult:]~~
 2028 ~~[(i) to which creation, transmission, or display a reasonable person would not consent;~~
 2029 ~~and]~~
 2030 ~~[(ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or~~
 2031 ~~pubic area;]~~
 2032 ~~[(B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,~~
 2033 ~~genitals, or pubic area; or]~~
 2034 ~~[(C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or~~
 2035 ~~physical health or safety of the vulnerable adult; or]~~
 2036 ~~[(b) causes the vulnerable adult to participate in an act that is highly offensive or~~
 2037 ~~demeaning to the vulnerable adult:]~~
 2038 ~~[(i) in which a reasonable person would not participate; or]~~
 2039 ~~[(ii) that is harmful to the mental or physical health or safety of the vulnerable adult.]~~
 2040 ~~[(5) (a) A caretaker does not violate Subsection (4)(a) if the caretaker creates,~~
 2041 ~~transmits, or displays the photographic or electronic image or recording:]~~
 2042 ~~[(i) with the consent of the vulnerable adult, if the vulnerable adult:]~~
 2043 ~~[(A) is mentally and physically able to give voluntary consent to the creation,~~
 2044 ~~transmission, or display; and]~~

2045 ~~[(B) gives voluntary consent for the creation, transmission, or display;]~~
2046 ~~[(ii) for a legitimate purpose relating to monitoring or providing care, treatment, or~~
2047 ~~diagnosis; or]~~
2048 ~~[(iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.]~~
2049 ~~[(b) A caretaker does not violate Subsection (4)(b) if:]~~
2050 ~~[(i) the vulnerable adult:]~~
2051 ~~[(A) is mentally and physically able to give voluntary consent to participate in the act;~~
2052 ~~and]~~
2053 ~~[(B) gives voluntary consent to participate in the act; or]~~
2054 ~~[(ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate~~
2055 ~~purpose relating to:]~~
2056 ~~[(A) monitoring or providing care, treatment, or diagnosis; or]~~
2057 ~~[(B) investigating abuse, neglect, or exploitation.]~~
2058 ~~[(6) (a) It is a separate offense under Subsection (4)(a) for each vulnerable adult~~
2059 ~~included in a photographic or electronic image or recording created, transmitted, or displayed~~
2060 ~~in violation of Subsection (4)(a).]~~
2061 ~~[(b) It is a separate offense under Subsection (4)(b) for each vulnerable adult caused to~~
2062 ~~participate in an act in violation of Subsection (4)(b).]~~
2063 ~~[(7) It is not a defense that the vulnerable adult was unaware of:]~~
2064 ~~[(a) the creation, transmission, or display prohibited under Subsection (4)(a); or]~~
2065 ~~[(b) participation in the act, or the nature of participation in the act, under Subsection~~
2066 ~~(4)(b).]~~
2067 ~~[(8) The offense of personal dignity exploitation of a vulnerable adult is:]~~
2068 ~~[(a) if done intentionally or knowingly, a class A misdemeanor; and]~~
2069 ~~[(b) if done recklessly, a class B misdemeanor.]~~
2070 ~~[(9) (a) A person commits the offense of financial exploitation of a vulnerable adult~~
2071 ~~when the person:]~~
2072 ~~[(i) is in a position of trust and confidence, or has a business relationship, with the~~
2073 ~~vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception~~
2074 ~~or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,~~
2075 ~~credit, assets, or other property with the intent to temporarily or permanently deprive the~~

~~vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;]~~

~~[(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;]~~

~~[(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;]~~

~~[(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or]~~

~~[(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity;]~~

~~[(b) A person is guilty of the offense of financial exploitation of a vulnerable adult as follows:]~~

~~[(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;]~~

~~[(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;]~~

~~[(iii) if done recklessly, the offense is a class A misdemeanor; or]~~

~~[(iv) if done with criminal negligence, the offense is a class B misdemeanor;]~~

~~[(10)] (4) (a) It does not constitute a defense to a prosecution for [any] a violation of this section that the [accused] actor did not know the age of the [victim] vulnerable adult.~~

~~[(11)] (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.~~

~~[(12)] (5) If an [individual] actor, including a caretaker, violates this section by willfully isolating a vulnerable adult, in addition to the penalties under Subsection [(2) or] (3), the court may require that the [individual] actor:~~

~~(a) undergo appropriate counseling as a condition of the sentence; and~~

(b) pay for the costs of the ordered counseling.

Section 44. Section **76-5-111.2** is enacted to read:

76-5-111.2. Aggravated abuse of a vulnerable adult -- Penalties.

(1) (a) As used in this section, "abuse," "caretaker," "isolation," "neglect", "serious physical injury," and "vulnerable adult" all mean the same as those terms are defined in Section 76-5-111.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor, including a caretaker, commits aggravated abuse of a vulnerable adult if the actor, under a circumstance likely to produce death or serious physical injury:

(a) causes a vulnerable adult to suffer serious physical injury;

(b) having the care or custody of a vulnerable adult, causes or permits the vulnerable adult's person or health to be injured; or

(c) causes or permits a vulnerable adult to be placed in a situation in which the vulnerable adult's person or health is endangered.

(3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or knowingly.

(b) A violation of Subsection (2) is a third degree felony if done recklessly.

(c) A violation of Subsection (2) is a class A misdemeanor if done with criminal negligence.

(4) (a) It does not constitute a defense to a prosecution for a violation of this section that the actor did not know the age of the vulnerable adult.

(b) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

(5) If an actor, including a caretaker, violates this section by willfully isolating a vulnerable adult, in addition to the penalties under Subsection (3), the court may require that the actor:

(a) undergo appropriate counseling as a condition of the sentence; and

(b) pay for the costs of the ordered counseling.

Section 45. Section **76-5-111.3** is enacted to read:

76-5-111.3. Personal dignity exploitation of a vulnerable adult -- Penalties.

2138 (1) (a) As used in this section, "abuse," "caretaker," "exploitation," "neglect," and
2139 "vulnerable adult" all mean the same as those terms are defined in Section 76-5-111.

2140 (b) Terms defined in Section 76-1-101.5 apply to this section.

2141 (2) Except as provided in Subsection (4), an actor commits personal dignity
2142 exploitation of a vulnerable adult if the actor is a caretaker of a vulnerable adult and
2143 intentionally, knowingly, or recklessly:

2144 (a) creates, transmits, or displays a photographic or electronic image or recording of the
2145 vulnerable adult:

2146 (i) to which creation, transmission, or display a reasonable person would not consent;
2147 and

2148 (ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or
2149 pubic area;

2150 (B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,
2151 genitals, or pubic area; or

2152 (C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or
2153 physical health or safety of the vulnerable adult; or

2154 (b) causes the vulnerable adult to participate in an act that is highly offensive or
2155 demeaning to the vulnerable adult:

2156 (i) in which a reasonable person would not participate; or

2157 (ii) that is harmful to the mental or physical health or safety of the vulnerable adult.

2158 (3) (a) (i) A violation of Subsection (2) is a class A misdemeanor if done intentionally
2159 or knowingly.

2160 (ii) A violation of Subsection (2) is a class B misdemeanor if done recklessly.

2161 (b) (i) It is a separate offense under Subsection (2)(a) for each vulnerable adult
2162 included in a photographic or electronic image or recording created, transmitted, or displayed
2163 in violation of Subsection (2)(a).

2164 (ii) It is a separate offense under Subsection (2)(b) for each vulnerable adult caused to
2165 participate in an act in violation of Subsection (2)(b).

2166 (4) (a) A caretaker does not violate Subsection (2)(a) if the caretaker creates, transmits,
2167 or displays the photographic or electronic image or recording:

2168 (i) with the consent of the vulnerable adult, if the vulnerable adult:

2169 (A) is mentally and physically able to give voluntary consent to the creation,
2170 transmission, or display; and
2171 (B) gives voluntary consent for the creation, transmission, or display;
2172 (ii) for a legitimate purpose relating to monitoring or providing care, treatment, or
2173 diagnosis; or
2174 (iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.
2175 (b) A caretaker does not violate Subsection (2)(b) if:
2176 (i) the vulnerable adult:
2177 (A) is mentally and physically able to give voluntary consent to participate in the act;
2178 and
2179 (B) gives voluntary consent to participate in the act; or
2180 (ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate
2181 purpose relating to:
2182 (A) monitoring or providing care, treatment, or diagnosis; or
2183 (B) investigating abuse, neglect, or exploitation.
2184 (5) (a) It is not a defense that the vulnerable adult was unaware of:
2185 (i) the creation, transmission, or display prohibited under Subsection (2)(a); or
2186 (ii) participation in the act, or the nature of participation in the act, under Subsection
2187 (2)(b).
2188 (b) It does not constitute a defense to a prosecution for a violation of this section that
2189 the actor did not know the age of the vulnerable adult.
2190 Section 46. Section **76-5-111.4** is enacted to read:
2191 **76-5-111.4. Financial exploitation of a vulnerable adult -- Penalties.**
2192 (1) (a) As used in this section:
2193 (i) "Abuse" means the same as that term is defined in Section 76-5-111.
2194 (ii) "Business relationship" means a relationship between two or more individuals or
2195 entities where there exists an oral or written agreement for the exchange of goods or services.
2196 (iii) "Deception" means:
2197 (A) a misrepresentation or concealment:
2198 (I) of a material fact relating to services rendered, disposition of property, or use of
2199 property intended to benefit a vulnerable adult;

2200 (II) of the terms of a contract or agreement entered into with a vulnerable adult; or
 2201 (III) relating to the existing or preexisting condition of any property involved in a
 2202 contract or agreement entered into with a vulnerable adult; or
 2203 (B) the use or employment of any misrepresentation, false pretense, or false promise in
 2204 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.
 2205 (iv) "Endeavor" means to attempt or try.
 2206 (v) "Isolation" means the same as that term is defined in Section 76-5-111.
 2207 (vi) "Intimidation" means communication conveyed through verbal or nonverbal
 2208 conduct that threatens deprivation of money, food, clothing, medicine, shelter, social
 2209 interaction, supervision, health care, or companionship, or that threatens isolation or harm.
 2210 (vii) "Lacks capacity to consent" means an impairment by reason of mental illness,
 2211 developmental disability, organic brain disorder, physical illness or disability, chronic use of
 2212 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
 2213 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
 2214 concerning the vulnerable adult's person or property.
 2215 (viii) "Neglect" means the same as that term is defined in Section 76-5-111.
 2216 (ix) "Undue influence" occurs when a person:
 2217 (A) uses influence to take advantage of a vulnerable adult's mental or physical
 2218 impairment; or
 2219 (B) uses the person's role, relationship, or power:
 2220 (I) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
 2221 fear of a vulnerable adult; or
 2222 (II) to gain control deceptively over the decision making of the vulnerable adult.
 2223 (x) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.
 2224 (b) Terms defined in Section 76-1-101.5 apply to this section.
 2225 (2) An actor commits the offense of financial exploitation of a vulnerable adult if the
 2226 actor:
 2227 (a) is in a position of trust and confidence, or has a business relationship, with the
 2228 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
 2229 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
 2230 credit, assets, or other property with the intent to temporarily or permanently deprive the

vulnerable adult of the use, benefit, or possession of the vulnerable adult's property, for the benefit of someone other than the vulnerable adult;

(b) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

(c) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(d) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or

(e) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.

(3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000.

(b) A violation of Subsection (2) is a third degree felony if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined.

(c) A violation of Subsection (2) is a class A misdemeanor if done recklessly.

(d) A violation of Subsection (2) is a class B misdemeanor if done with criminal negligence.

(4) It does not constitute a defense to a prosecution for a violation of this section that the actor did not know the age of the vulnerable adult.

Section 47. Section **76-5-112** is amended to read:

76-5-112. Reckless endangerment -- Penalty.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person]~~ (2) An actor commits reckless endangerment if, under circumstances not amounting to a felony offense, the ~~[person]~~ actor recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to another ~~[person]~~ individual.

~~[(2) Reckless endangerment]~~ (3) A violation of Subsection (2) is a class A

2262 misdemeanor.

2263 Section 48. Section **76-5-112.5** is amended to read:

2264 **76-5-112.5. Endangerment of a child or vulnerable adult.**

2265 (1) (a) As used in this section:

2266 ~~[(a)-(i)]~~ (i) (A) "Chemical substance" means:

2267 ~~[(A)]~~ (I) a substance intended to be used as a precursor in the manufacture of a
2268 controlled substance;

2269 ~~[(B)]~~ (II) a substance intended to be used in the manufacture of a controlled substance;

2270 or

2271 ~~[(C)]~~ (III) any fumes or by-product resulting from the manufacture of a controlled
2272 substance.

2273 ~~[(ii)]~~ (B) Intent under this Subsection (1)(a)(i) may be demonstrated by:

2274 ~~[(A)]~~ (I) the use, quantity, or manner of storage of the substance; or

2275 ~~[(B)]~~ (II) the proximity of the substance to other precursors or to manufacturing
2276 equipment.

2277 ~~[(b)]~~ (ii) "Child" means an individual who is under 18 years ~~[of age]~~ old.

2278 ~~[(c)]~~ (iii) "Controlled substance" means the same as that term is defined in Section
2279 58-37-2.

2280 ~~[(d)]~~ (iv) "Drug paraphernalia" means the same as that term is defined in Section
2281 58-37a-3.

2282 ~~[(e)]~~ (v) "Exposed to" means that the child or vulnerable adult:

2283 ~~[(f)]~~ (A) is able to access an unlawfully possessed:

2284 ~~[(A)]~~ (I) controlled substance; or

2285 ~~[(B)]~~ (II) chemical substance;

2286 ~~[(ii)]~~ (B) has the reasonable capacity to access drug paraphernalia; or

2287 ~~[(iii)]~~ (C) is able to smell an odor produced during, or as a result of, the manufacture or
2288 production of a controlled substance.

2289 ~~[(f)]~~ (vi) "Prescription" means the same as that term is defined in Section 58-37-2.

2290 ~~[(g)]~~ (vii) "Vulnerable adult" means the same as that term is defined in ~~[Subsection~~

2291 ~~76-5-111(1)]~~ Section 76-5-111.

2292 ~~[(2) Unless a greater penalty is otherwise provided by law:]~~

2293 ~~[(a) except as provided in Subsections (2)(b), (c), and (3), an individual is guilty of a~~
2294 ~~felony of the third degree if the individual]~~

2295 (b) Terms defined in Section 76-1-101.5 apply to this section.

2296 (2) An actor commits endangerment of a child or vulnerable adult if the actor
2297 knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to,
2298 inhale, ingest, or have contact with a controlled substance, chemical substance, or drug
2299 paraphernalia[;].

2300 ~~[(b) except as provided in Subsection (2)(c) and (3), an individual is guilty of a felony~~
2301 ~~of the second degree, if:]~~

2302 (3) (a) A violation of Subsection (2) is a third degree felony.

2303 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
2304 felony if:

2305 (i) the ~~[individual]~~ actor engages in the conduct described in Subsection (2)~~[(a)]~~; and

2306 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
2307 vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury~~[, or]~~.

2308 ~~[(c) an individual is guilty of a felony of the first degree, if:]~~

2309 (c) Notwithstanding Subsections (3)(a) and (b), a violation of Subsection (2) is a first
2310 degree felony if:

2311 (i) the ~~[individual]~~ actor engages in the conduct described in Subsection (2)~~[(a)]~~; and

2312 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
2313 vulnerable adult dies.

2314 ~~[(3)]~~ (4) (a) Notwithstanding Subsection ~~[(2)]~~ (3), a child may not be subjected to
2315 delinquency proceedings for a violation of Subsection (2) unless:

2316 ~~[(a)]~~ (i) the child is 15 years old or older; and

2317 ~~[(b)]~~ (ii) the other child who is exposed to or inhales, ingests, or has contact with the
2318 controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.

2319 ~~[(4)]~~ (b) It is an affirmative defense to a violation of this section that the controlled
2320 substance:

2321 ~~[(a)]~~ (i) was obtained by lawful prescription or in accordance with Title 26, Chapter
2322 61a, Utah Medical Cannabis Act; and

2323 ~~[(b)]~~ (ii) is used or possessed by the individual to whom the controlled substance was

2324 lawfully prescribed or recommended to under Title 26, Chapter 61a, Utah Medical Cannabis
2325 Act.

2326 (5) The penalties described in this section are separate from, and in addition to, the
2327 penalties and enhancements described in Title 58, Occupations and Professions.

2328 (6) If an offense committed under this section amounts to an offense subject to a
2329 greater penalty under another provision of state law, this section does not prohibit prosecution
2330 and sentencing for the more serious offense.

2331 Section 49. Section **76-5-113** is amended to read:

2332 **76-5-113. Surreptitious administration of certain substances -- Definitions --**
2333 **Penalties -- Defenses.**

2334 (1) (a) As used in this section:

2335 ~~[(a)]~~ (i) "Administer" means the introduction of a substance into the body by injection,
2336 inhalation, ingestion, or by any other means.

2337 ~~[(b)]~~ (ii) "Alcoholic beverage" ~~[has the same meaning as "alcoholic beverage"]~~ means
2338 the same as that term is defined in Section 32B-1-102.

2339 ~~[(c)]~~ "Bodily injury" ~~has the same definition as in Section 76-1-601.~~

2340 ~~[(d)]~~ (iii) "Controlled substance" ~~[has the same definition as]~~ means the same as that
2341 term is defined in Section 58-37-2.

2342 ~~[(e)]~~ (iv) "Deleterious substance" means a substance which, if administered, would
2343 likely cause bodily injury.

2344 (v) "Health care provider" means the same as that term is defined in Section 26-23a-1.

2345 ~~[(f)]~~ (vi) "Poisonous" means a substance which, if administered, would likely cause
2346 serious bodily injury or death.

2347 ~~[(g)]~~ (vii) "Prescription drug" ~~[has the same definition as]~~ means the same as that term
2348 is defined in Section 58-17b-102.

2349 ~~[(h)]~~ (viii) "Serious bodily injury" ~~[has the same definition as]~~ means the same as that
2350 term is defined in Section 19-2-115.

2351 ~~[(i)]~~ (ix) "Substance" means a controlled substance, poisonous substance, or
2352 deleterious substance ~~[as defined in this Subsection (1)].~~

2353 (b) Terms defined in Section 76-1-101.5 apply to this section.

2354 (2) ~~[In addition to any other offense the actor's conduct may constitute, it is a criminal~~

~~offense for a person]~~ An actor commits surreptitious administration of a certain substance if the
actor, surreptitiously or by means of fraud, deception, or misrepresentation, [~~to cause another~~
~~person]~~ causes an individual to unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance, regardless of
whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a),
and is a controlled substance or a prescription drug; [~~and~~] or

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic
beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that the actor's conduct was in the best interest of the
well-being of the [~~person~~] individual to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing
of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days
before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names
and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) (i) The prosecuting attorney shall file and serve the defendant with a notice
containing the names and addresses of the witnesses the prosecutor proposes to examine in
order to contradict or rebut the defendant's claim of an affirmative defense under Subsection
(4)(a).

(ii) This notice shall be filed or served not more than 10 days after receipt of the
defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c)
entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may
impose appropriate sanctions.

(5) (a) This section does not diminish the scope of authorized health care by a health care provider ~~[as defined in Section 26-23a-1]~~.

(b) Conduct in violation of Subsection (2) may also constitute a separate offense.

Section 50. Section **76-5-114**, which is renumbered from Section 76-5-109.1 is renumbered and amended to read:

~~[76-5-109.1].~~ **76-5-114. Commission of domestic violence in the presence of a child.**

(1) (a) As used in this section:

~~[(a)] (i)~~ "Cohabitant" ~~[has the same meaning as]~~ means the same as that term is defined in Section 78B-7-102.

~~[(b)] (ii)~~ "Criminal homicide offense" means an offense listed in Subsection 76-5-201(2).

~~[(b)] (iii)~~ "Domestic violence" ~~[has the same meaning as]~~ means the same as that term is defined in Section 77-36-1.

~~[(c)] (iv)~~ "In the presence of a child" means:

~~[(i)] (A)~~ in the physical presence of a child; or

~~[(ii)] (B)~~ having knowledge that a child is present and may see or hear an act of domestic violence.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person]~~ An actor commits domestic violence in the presence of a child if the ~~[person]~~ actor:

(a) commits or attempts to commit a criminal homicide~~[; as defined in Section 76-5-201;]~~ offense against a cohabitant in the presence of a child; ~~[or]~~

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon~~[; as defined in Section 76-1-601;]~~ or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) ~~[A person who violates]~~ A violation of Subsection (2)(a) or (b) is ~~[guilty of]~~ a third degree felony.

(b) ~~[A person who violates]~~ A violation of Subsection (2)(c) is ~~[guilty of]~~ a class B misdemeanor.

(4) (a) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence ~~[where]~~ in which the victim is the cohabitant.

(b) Either or both charges may be filed by the prosecutor.

(5) ~~[A person]~~ An actor who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child regarding each child present when the violation occurred.

Section 51. Section **76-5-201** is amended to read:

76-5-201. Criminal homicide -- Designations of offenses -- Exceptions --

Application of consensual altercation defense.

~~[(1)(a) Except as provided in Subsections (3) and (4), a person commits criminal homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child at any stage of its development.]~~

~~[(b) There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion, as defined in Section 76-7-301.]~~

~~[(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide.]~~

(1) (a) As used in this section, "abortion" means the same as that term is defined in Section 76-7-301.

(b) The terms defined in Section 76-1-101.5 apply to this section.

(2) The following are criminal homicide:

(a) aggravated murder;

(b) murder;

(c) manslaughter;

(d) child abuse;

(e) homicide;

(f) homicide by assault;

(g) negligent homicide; and

(h) automobile homicide.

~~[(3) A person]~~ (3) Notwithstanding Subsection (2), an actor is not guilty of criminal homicide ~~[of an unborn child if]~~ if:

2448 (a) the death of an unborn child is caused by an abortion;
 2449 (b) the sole reason for the death of [the] an unborn child is that the [person] actor:
 2450 [~~(a)~~] (i) refused to consent to:
 2451 [~~(i)~~] (A) medical treatment; or
 2452 [~~(ii)~~] (B) a cesarean section; or
 2453 [~~(b)~~] (ii) failed to follow medical advice[-]; or
 2454 [~~(4) A woman is not guilty of criminal homicide of her own unborn child if the death~~
 2455 ~~of her unborn child:]~~
 2456 (c) a woman causes the death of her own unborn child, and the death:
 2457 [~~(a)~~] (i) is caused by a criminally negligent act or reckless act of the woman; and
 2458 [~~(b)~~] (ii) is not caused by an intentional or knowing act of the woman.
 2459 (4) The provisions governing a defense of a consensual altercation as described in
 2460 Section 76-5-104 apply to this part.
 2461 Section 52. Section **76-5-202** is amended to read:
 2462 **76-5-202. Aggravated murder -- Penalties -- Affirmative defense and special**
 2463 **mitigation -- Separate offense.**
 2464 [~~(1) Criminal homicide constitutes aggravated murder if the actor intentionally or~~
 2465 ~~knowingly causes the death of another under any of the following circumstances:]~~
 2466 [~~(a) the homicide was committed by a person who is]~~
 2467 (1) (a) As used in this section:
 2468 (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.
 2469 (ii) "Emergency responder" means the same as that term is defined in Section
 2470 53-2b-102.
 2471 (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.
 2472 (iv) "Law enforcement officer" means the same as that term is defined in Section
 2473 53-13-103.
 2474 (v) "Peace officer" means:
 2475 (A) a correctional officer, federal officer, law enforcement officer, or special function
 2476 officer; or
 2477 (B) any other person who may exercise peace officer authority in accordance with Title
 2478 53, Chapter 13, Peace Officer Classifications.

2479 (vi) "Special function officer" means the same as that term is defined in Section
2480 53-13-105.

2481 (vii) "Target a law enforcement officer" means an act:
2482 (A) involving the unlawful use of force and violence against a law enforcement officer;
2483 (B) that causes serious bodily injury or death; and
2484 (C) that is in furtherance of political or social objectives in order to intimidate or
2485 coerce a civilian population or to influence or affect the conduct of a government or a unit of
2486 government.

2487 (viii) "Weapon of mass destruction" means the same as that term is defined in Section
2488 76-10-401.

2489 (b) Terms defined in Section 76-1-101.5 apply to this section.

2490 (2) (a) An actor commits aggravated murder if the actor intentionally or knowingly
2491 causes the death of another individual under any of the following circumstances:

2492 (i) the actor committed homicide while confined in a jail or other correctional
2493 institution;

2494 ~~[(b) the homicide was committed]~~ (ii) (A) the actor committed homicide incident to
2495 one act, scheme, course of conduct, or criminal episode during which two or more ~~[persons]~~
2496 individuals other than the actor were killed~~[-or during which the actor attempted to kill one or~~
2497 ~~more persons in addition to the victim who was killed]; or~~

2498 (B) the actor, during commission of the homicide, attempted to kill one or more other
2499 individuals in addition to the deceased individual;

2500 ~~[(c)]~~ (iii) the actor knowingly created a great risk of death to [a person] another
2501 individual other than the ~~[victim]~~ deceased individual and the actor;

2502 ~~[(d)]~~ (iv) the actor committed homicide [was committed] incident to an act, scheme,
2503 course of conduct, or criminal episode during which the actor committed or attempted to
2504 commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child,
2505 forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child,
2506 aggravated sexual abuse of a child, aggravated child abuse as ~~[defined]~~ described in Subsection
2507 ~~[76-5-109(2)(a)]~~ 76-5-109.2(3)(a), or aggravated sexual assault, aggravated arson, arson,
2508 aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

2509 ~~[(e)]~~ (v) the actor committed homicide [was committed] incident to one act, scheme,

2510 course of conduct, or criminal episode during which the actor committed the crime of abuse or
 2511 desecration of a dead human body as [~~defined~~] described in Subsection 76-9-704(2)(e);

2512 [~~(f)~~] (vi) the actor committed homicide [~~was committed~~] for the purpose of avoiding or
 2513 preventing an arrest of the [~~defendant~~] actor or another individual by a peace officer acting
 2514 under color of legal authority or for the purpose of effecting the [~~defendant's or another's~~]
 2515 actor's or another individual's escape from lawful custody;

2516 [~~(g)~~] (vii) the actor committed homicide [~~was committed~~] for pecuniary gain;

2517 [~~(h)~~] (viii) the [~~defendant~~] actor committed, [~~or~~] engaged, or employed another person
 2518 to commit the homicide [~~pursuant~~] subject to an agreement or contract for remuneration or the
 2519 promise of remuneration for commission of the homicide;

2520 [~~(i)~~] (ix) the actor previously committed or was convicted of:

2521 [~~(i)~~] (A) aggravated murder under this section;

2522 [~~(ii)~~] (B) attempted aggravated murder under this section;

2523 [~~(iii)~~] (C) murder, under Section 76-5-203;

2524 [~~(iv)~~] (D) attempted murder, under Section 76-5-203; or

2525 [~~(v)~~] (E) an offense committed in another jurisdiction which if committed in this state
 2526 would be a violation of a crime listed in this Subsection [~~(i)(i)~~] (2)(a)(ix);

2527 [~~(j)~~] (x) the actor was previously convicted of:

2528 [~~(i)~~] (A) aggravated assault, [~~Subsection 76-5-103(2)~~] under Section 76-5-103;

2529 [~~(ii)~~] (B) mayhem, under Section 76-5-105;

2530 [~~(iii)~~] (C) kidnapping, under Section 76-5-301;

2531 [~~(iv)~~] (D) child kidnapping, under Section 76-5-301.1;

2532 [~~(v)~~] (E) aggravated kidnapping, under Section 76-5-302;

2533 [~~(vi)~~] (F) rape, under Section 76-5-402;

2534 [~~(vii)~~] (G) rape of a child, under Section 76-5-402.1;

2535 [~~(viii)~~] (H) object rape, under Section 76-5-402.2;

2536 [~~(ix)~~] (I) object rape of a child, under Section 76-5-402.3;

2537 [~~(x)~~] (J) forcible sodomy, under Section 76-5-403;

2538 [~~(xi)~~] (K) sodomy on a child, under Section 76-5-403.1;

2539 [~~(xii)~~] (L) aggravated sexual abuse of a child, under Section [~~76-5-404.1~~] 76-5-404.3;

2540 [~~(xiii)~~] (M) aggravated sexual assault, under Section 76-5-405;

2541 ~~[(xiv)]~~ (N) aggravated arson, under Section 76-6-103;

2542 ~~[(xv)]~~ (O) aggravated burglary, under Section 76-6-203;

2543 ~~[(xvi)]~~ (P) aggravated robbery, under Section 76-6-302;

2544 ~~[(xvii)]~~ (Q) felony discharge of a firearm, under Section 76-10-508.1; or

2545 ~~[(xviii)]~~ (R) an offense committed in another jurisdiction which if committed in this

2546 state would be a violation of a crime listed in this Subsection ~~[(+)(j)]~~ (2)(a)(x);

2547 ~~[(k)]~~ (xi) the actor committed homicide ~~[was committed]~~ for the purpose of:

2548 ~~[(i)]~~ (A) preventing a witness from testifying;

2549 ~~[(ii)]~~ (B) preventing a person from providing evidence or participating in any legal

2550 proceedings or official investigation;

2551 ~~[(iii)]~~ (C) retaliating against a person for testifying, providing evidence, or participating

2552 in any legal proceedings or official investigation; or

2553 ~~[(iv)]~~ (D) disrupting or hindering any lawful governmental function or enforcement of

2554 laws;

2555 ~~[(+)]~~ (xii) the ~~[victim is or has been]~~ deceased individual was a local, state, or federal

2556 public official, or a candidate for public office, and the homicide is based on, is caused by, or is

2557 related to that official position, act, capacity, or candidacy;

2558 ~~[(m)]~~ (xiii) the ~~[victim is]~~ deceased individual was on duty in a verified position or the

2559 homicide is based on, is caused by, or is related to the ~~[victim's]~~ deceased individual's position,

2560 and the actor knew, or reasonably should have known, that the ~~[victim]~~ deceased individual

2561 holds or has held the position of:

2562 ~~[(i) a law enforcement officer, correctional officer, special function officer, or any~~

2563 ~~other peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;]~~

2564 (A) a peace officer;

2565 ~~[(ii)]~~ (B) an executive officer, prosecuting officer, jailer, or prison official;

2566 ~~[(iii)]~~ (C) a firefighter, search and rescue personnel, emergency medical personnel,

2567 ambulance personnel, or any other emergency responder ~~[as defined in Section 53-2b-102];~~

2568 ~~[(iv)]~~ (D) a judge or other court official, juror, probation officer, or parole officer; or

2569 ~~[(v)]~~ (E) a security officer contracted to secure, guard, or otherwise protect tangible

2570 personal property, real property, or the life and well-being of human or animal life in the area

2571 of the offense;

2572 ~~[(n)]~~ (xiv) the actor committed homicide ~~[was committed]~~:

2573 ~~[(i)]~~ (A) by means of a destructive device, bomb, explosive, incendiary device, or

2574 similar device which was planted, hidden, or concealed in any place, area, dwelling, building,

2575 or structure, or was mailed or delivered;

2576 ~~[(ii)]~~ (B) by means of any weapon of mass destruction ~~[as defined in Section~~

2577 ~~76-10-401]~~; or

2578 ~~[(iii)]~~ (C) to target a law enforcement officer ~~[as defined in Section 76-5-210]~~;

2579 ~~[(o)]~~ (xv) the actor committed homicide ~~[was committed]~~ during the act of unlawfully

2580 assuming control of ~~[any]~~ an aircraft, train, or other public conveyance by use of threats or

2581 force with intent to:

2582 (A) obtain any valuable consideration for the release of the public conveyance or any

2583 passenger, crew member, or any other person aboard~~[-or to]~~;

2584 (B) direct the route or movement of the public conveyance; or

2585 (C) otherwise exert control over the public conveyance;

2586 ~~[(p)]~~ (xvi) the actor committed homicide ~~[was committed]~~ by means of the

2587 administration of a poison or of any lethal substance or of any substance administered in a

2588 lethal amount, dosage, or quantity;

2589 ~~[(q)]~~ (xvii) the ~~[victim]~~ deceased individual was ~~[a person]~~ held or otherwise detained

2590 as a shield, hostage, or for ransom;

2591 ~~[(r)]~~ (xviii) the actor committed homicide ~~[was committed]~~ in an especially heinous,

2592 atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by

2593 physical torture, serious physical abuse, or serious bodily injury of the ~~[victim]~~ deceased

2594 individual before death;

2595 ~~[(s)]~~ (xix) the actor dismembers, mutilates, or disfigures the ~~[victim's]~~ deceased

2596 individual's body, whether before or after death, in a manner demonstrating the actor's

2597 depravity of mind; or

2598 ~~[(t)]~~ (xx) the ~~[victim]~~ deceased individual, at the time of the death of the ~~[victim]~~

2599 deceased individual:

2600 ~~[(i)]~~ (A) was younger than 14 years ~~[of age]~~ old; and

2601 ~~[(ii)]~~ (B) was not an unborn child.

2602 ~~[(2) Criminal homicide constitutes aggravated murder if the]~~

(b) An actor commits aggravated murder if the actor, with reckless indifference to human life, causes the death of another individual incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

~~[(a)]~~ (i) aggravated child abuse, punishable as a felony of the second degree under Subsection [76-5-109(2)(a)] 76-5-109.2(3)(a);

~~[(b)]~~ (ii) child kidnapping, under Section 76-5-301.1;

~~[(c)]~~ (iii) rape of a child, under Section 76-5-402.1;

~~[(d)]~~ (iv) object rape of a child, under Section 76-5-402.3;

~~[(e)]~~ (v) sodomy on a child, under Section 76-5-403.1; or

~~[(f)]~~ (vi) sexual abuse or aggravated sexual abuse of a child, under Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, ~~[aggravated murder]~~ a violation of Subsection (2) is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty.

(ii) The notice shall be served on the defendant or defense counsel and filed with the court.

~~[(iii)]~~ (iii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(e) If the defendant was younger than 18 years ~~[of age]~~ old at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(f) (i) If the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance

2634 of the evidence and in accordance with Section 76-5-205.5, the actor:

2635 (A) is guilty of a first degree felony; and

2636 (B) shall be sentenced in accordance with the sentencing provisions of Subsection
 2637 76-5-203(3)(b).

2638 (ii) If the trier of fact finds that special mitigation is not established in accordance with
 2639 Section 76-5-205.5, the trier of fact shall convict the defendant of aggravated murder or
 2640 attempted aggravated murder, respectively.

2641 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
 2642 aggravated murder that the [~~defendant~~] actor caused the death of another or attempted to cause
 2643 the death of another under a reasonable belief that the circumstances provided a legal
 2644 justification or excuse for the conduct although the conduct was not legally justifiable or
 2645 excusable under the existing circumstances.

2646 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
 2647 the viewpoint of a reasonable person under the then existing circumstances.

2648 (c) [~~This~~] The affirmative defense described in Subsection (4)(a) reduces charges only
 2649 as follows:

2650 (i) aggravated murder to murder; and

2651 (ii) attempted aggravated murder to attempted murder.

2652 (5) (a) Any aggravating circumstance described in Subsection [~~(1)-or~~] (2) that
 2653 constitutes a separate offense does not merge with the crime of aggravated murder.

2654 (b) [~~A person~~] An actor who is convicted of aggravated murder, based on an
 2655 aggravating circumstance described in Subsection [~~(1)-or~~] (2) that constitutes a separate
 2656 offense, may also be convicted of, and punished for, the separate offense.

2657 Section 53. Section **76-5-203** is amended to read:

2658 **76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation --**
 2659 **Separate offenses.**

2660 (1) (a) As used in this section, "predicate offense" means:

2661 [~~(a)~~] (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

2662 [~~(b)~~] (ii) aggravated child abuse, under Subsection [~~76-5-109(2)(a)~~] 76-5-109.2(3)(a),

2663 when the [~~victim~~] abused individual is younger than 18 years [~~of age~~] old;

2664 [~~(c)~~] (iii) kidnapping under Section 76-5-301;

2665 ~~[(d)]~~ (iv) child kidnapping under Section 76-5-301.1;
 2666 ~~[(e)]~~ (v) aggravated kidnapping under Section 76-5-302;
 2667 (vi) rape under Section 76-5-402;
 2668 ~~[(f)]~~ (vii) rape of a child under Section 76-5-402.1;
 2669 (viii) object rape under Section 76-5-402.2;
 2670 ~~[(g)]~~ (ix) object rape of a child under Section 76-5-402.3;
 2671 (x) forcible sodomy under Section 76-5-403;
 2672 ~~[(h)]~~ (xi) sodomy upon a child under Section 76-5-403.1;
 2673 ~~[(i)]~~ (xii) forcible sexual abuse under Section 76-5-404;
 2674 ~~[(j)]~~ (xiii) sexual abuse of a child ~~[or aggravated sexual abuse of a child]~~ under Section
 2675 76-5-404.1;
 2676 ~~[(k)]~~ rape under Section 76-5-402;
 2677 ~~[(l)]~~ object rape under Section 76-5-402.2;
 2678 ~~[(m)]~~ forcible sodomy under Section 76-5-403;
 2679 (xiv) aggravated sexual abuse of a child under Section 76-5-404.3;
 2680 ~~[(n)]~~ (xv) aggravated sexual assault under Section 76-5-405;
 2681 ~~[(o)]~~ (xvi) arson under Section 76-6-102;
 2682 ~~[(p)]~~ (xvii) aggravated arson under Section 76-6-103;
 2683 ~~[(q)]~~ (xviii) burglary under Section 76-6-202;
 2684 ~~[(r)]~~ (xix) aggravated burglary under Section 76-6-203;
 2685 ~~[(s)]~~ (xx) robbery under Section 76-6-301;
 2686 ~~[(t)]~~ (xxi) aggravated robbery under Section 76-6-302;
 2687 ~~[(u)]~~ (xxii) escape or aggravated escape under Section 76-8-309; or
 2688 ~~[(v)]~~ (xxiii) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge
 2689 of a firearm or dangerous weapon.
 2690 (b) Terms defined in Section 76-1-101.5 apply to this section.
 2691 (2) ~~[Criminal homicide constitutes]~~ An actor commits murder if:
 2692 (a) the actor intentionally or knowingly causes the death of another individual;
 2693 (b) intending to cause serious bodily injury to another individual, the actor commits an
 2694 act clearly dangerous to human life that causes the death of ~~[another]~~ the other individual;
 2695 (c) acting under circumstances evidencing a depraved indifference to human life, the

2696 actor knowingly engages in conduct [~~which~~] that creates a grave risk of death to another
 2697 individual and thereby causes the death of [~~another~~] the other individual;

2698 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
 2699 flight from the commission or attempted commission of any predicate offense, or is a party to
 2700 the predicate offense;

2701 (ii) [~~a person~~] an individual other than a party [~~as defined~~] described in Section
 2702 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight
 2703 from the commission or attempted commission of any predicate offense; and

2704 (iii) the actor acted with the intent required as an element of the predicate offense;

2705 (e) the actor recklessly causes the death of a peace officer or military service member
 2706 in uniform while in the commission or attempted commission of:

2707 (i) an assault against a peace officer under Section 76-5-102.4;

2708 (ii) interference with a peace officer while making a lawful arrest under Section
 2709 76-8-305 if the actor uses force against [~~a~~] the peace officer; or

2710 (iii) an assault against a military service member in uniform under Section 76-5-102.4;

2711 (f) the actor commits a homicide [~~which~~] that would be aggravated murder, but the
 2712 offense is reduced [~~pursuant to~~] in accordance with Subsection 76-5-202(4); or

2713 (g) the actor commits aggravated murder, but special mitigation is established under
 2714 Section 76-5-205.5.

2715 (3) (a) [~~Murder~~] A violation of Subsection (2) is a first degree felony.

2716 (b) [~~A person~~] A defendant who is convicted of murder shall be sentenced to
 2717 imprisonment for an indeterminate term of not less than 15 years and which may be for life.

2718 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
 2719 defendant caused the death of another individual or attempted to cause the death of another
 2720 individual under a reasonable belief that the circumstances provided a legal justification or
 2721 excuse for the conduct although the conduct was not legally justifiable or excusable under the
 2722 existing circumstances.

2723 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
 2724 the viewpoint of a reasonable person under the then existing circumstances.

2725 (c) [~~This~~] The affirmative defense described in Subsection (4)(a) reduces charges only
 2726 from:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.

(d) (i) If the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the actor is guilty of a felony of the second degree.

(ii) If the trier of fact finds that special mitigation is not established in accordance with Section 76-5-205.5, the trier of fact shall convict the defendant of murder or attempted murder, respectively.

(5) (a) Any predicate offense [~~described in Subsection (1)~~] that constitutes a separate offense does not merge with the crime of murder.

(b) [~~A person~~] An actor who is convicted of murder, based on a predicate offense [~~described in Subsection (1)~~] that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 54. Section **76-5-205** is amended to read:

76-5-205. Manslaughter -- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) (A) "Aid" means the act of providing the physical means.

~~[(ii)]~~ (B) "Aid" does not include the withholding or withdrawal of life sustaining treatment procedures to the extent allowed under Title 75, Chapter 2a, Advance Health Care Directive Act, or any other laws of this state.

~~[(b)]~~ (ii) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by law to administer, dispense, distribute, or prescribe medications or procedures in the course of professional practice.

~~[(c)]~~ (iii) "Provides" means to administer, prescribe, distribute, or dispense.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Except as provided in Subsection (5), [~~criminal homicide constitutes manslaughter if the actor~~] an actor commits manslaughter if the actor:

(a) recklessly causes the death of another individual;

(b) intentionally, and with knowledge that another individual intends to commit suicide or attempt to commit suicide, aids the [~~other~~] individual to commit suicide; or

(c) commits a homicide which would be murder, but the offense is reduced ~~[pursuant to]~~ in accordance with Subsection 76-5-203(4)~~[-or]~~.

~~[(d) commits murder, but special mitigation is established under Section 76-5-205.5.]~~

(3) ~~[Manslaughter]~~ A violation of Subsection (2) is a felony of the second degree.

(4) (a) In addition to the penalty described under this section or any other section,~~an individual]~~ a defendant who is convicted of violating this section shall have the ~~[individual's]~~ defendant's driver license revoked under Section 53-3-220 if the death of another individual results from driving a motor vehicle.

(b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

(5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides medication or a procedure to treat an individual's illness or relieve an individual's pain or discomfort, regardless of whether the medication or procedure may hasten or increase the risk of death to the individual to whom the practitioner provides the medication or procedure~~[- unless]~~.

(b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the practitioner intentionally and knowingly provides the medication or procedure to aid the individual to commit suicide or attempt to commit suicide.

Section 55. Section **76-5-205.5** is amended to read:

76-5-205.5. Special mitigation for mental illness or provocation -- Burden of proof -- Charge reduction.

(1) (a) As used in this section:

~~[(A)]~~ (i) (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock, or grief that:

~~[(A)]~~ (I) causes the defendant to be incapable of reflection and restraint; and

~~[(B)]~~ (II) would cause an objectively reasonable person to be incapable of reflection and restraint.

~~[(ii)]~~ (B) "Extreme emotional distress" does not include:

~~[(A)]~~ (I) a condition resulting from mental illness; or

~~[(B)]~~ (II) distress that is substantially caused by the defendant's own conduct.

~~[(b)]~~ (ii) "Mental illness" means the same as that term is defined in Section 76-2-305.

(b) The terms defined in Section 76-1-101.5 apply to this section.

(2) Special mitigation exists when a defendant causes the death of another individual or attempts to cause the death of another individual:

(a) (i) under circumstances that are not legally justified, but the defendant acts under a delusion attributable to a mental illness;

(ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and

(iii) the defendant's actions, in light of the delusion, are reasonable from the objective viewpoint of a reasonable person; or

(b) except as provided in Subsection (4), under the influence of extreme emotional distress that is predominantly caused by the victim's highly provoking act immediately preceding the defendant's actions.

(3) A defendant who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (2)(a) on the basis of mental illness if the alcohol or substance causes, triggers, or substantially contributes to the defendant's mental illness.

(4) A defendant may not claim special mitigation under Subsection (2)(b) if:

(a) the time period after the victim's highly provoking act and before the defendant's actions was long enough for an objectively reasonable person to have recovered from the extreme emotional distress;

(b) the defendant responded to the victim's highly provoking act by inflicting serious or substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the victim, regardless of whether the victim was conscious during the infliction of serious or substantial bodily injury or torture; or

(c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of words alone.

~~[(5) (a) If the trier of fact finds that the elements of an offense described in Subsection (5)(b) are proven beyond a reasonable doubt, and also finds that the existence of special mitigation under this section is established by a preponderance of the evidence, the trier of fact~~

2820 ~~shall return a verdict on the reduced charge as provided in Subsection (5)(b).]~~

2821 ~~[(b) If under Subsection (5)(a) the offense is:]~~

2822 ~~[(i) aggravated murder, the defendant shall instead be found guilty of murder;]~~

2823 ~~[(ii) attempted aggravated murder, the defendant shall instead be found guilty of~~

2824 ~~attempted murder;]~~

2825 ~~[(iii) murder, the defendant shall instead be found guilty of manslaughter; or]~~

2826 ~~[(iv) attempted murder, the defendant shall instead be found guilty of attempted~~

2827 ~~manslaughter.]~~

2828 ~~[(c) If the trier of fact finds that special mitigation is not established under this section,~~

2829 ~~the trier of fact shall convict the defendant of the offense for which the prosecution proves all~~

2830 ~~the elements beyond a reasonable doubt.]~~

2831 ~~[(6)] (5) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to~~

2832 ~~establish the existence of the special mitigation under this section.~~

2833 (b) If the jury finds special mitigation by a unanimous vote, the jury shall return a

2834 verdict on the reduced charge ~~[as provided in Subsection (5)]~~ in accordance with the criminal

2835 homicide statute under which the defendant is charged.

2836 (c) If the jury finds by a unanimous vote that special mitigation is not established, or if

2837 the jury is unable to unanimously agree special mitigation is established, the jury shall convict

2838 the defendant of the greater offense for which the prosecution proves all the elements beyond a

2839 reasonable doubt.

2840 ~~[(7)] (6) (a) If the issue of special mitigation is submitted to the trier of fact, the trier of~~

2841 ~~fact shall return a special verdict indicating whether the existence of special mitigation is~~

2842 ~~found.~~

2843 (b) The trier of fact shall return the special verdict at the same time as the general

2844 verdict, to indicate the basis for the general verdict.

2845 ~~[(8) Special mitigation under this section does not, in any case, reduce the level of an~~

2846 ~~offense by more than one degree from that offense, the elements of which the evidence proves~~

2847 ~~beyond a reasonable doubt.]~~

2848 Section 56. Section **76-5-206** is amended to read:

2849 **76-5-206. Negligent homicide -- Penalties.**

2850 (1) Definitions of terms in Section 76-1-101.5 apply to this section.

2851 ~~[(1) Criminal homicide constitutes negligent homicide]~~ (2) An actor commits
 2852 negligent homicide if the actor, acting with criminal negligence, causes the death of another
 2853 individual.

2854 ~~[(2) Negligent homicide]~~ (3) A violation of Subsection (2) is a class A misdemeanor.

2855 ~~[(3)]~~ (4) (a) In addition to the penalty provided under this section or any other section,
 2856 ~~[a person]~~ a defendant who is convicted of violating this section shall have the ~~[person's]~~
 2857 defendant's driver license revoked under Section 53-3-220 if the death of another ~~[person]~~
 2858 individual results from driving a motor vehicle.

2859 (b) The court shall forward the report of the conviction to the Driver License Division
 2860 in accordance with Section 53-3-218.

2861 Section 57. Section **76-5-207** is amended to read:

2862 **76-5-207. Automobile homicide -- Penalties -- Evidence.**

2863 (1) (a) As used in this section:

2864 (i) "Criminally negligent" means the same as that term is described in Subsection
 2865 76-2-103(4).

2866 ~~[(a)]~~ (ii) "Drug" or "drugs" means:

2867 ~~[(i)]~~ (A) a controlled substance as defined in Section 58-37-2;

2868 ~~[(ii)]~~ (B) a drug as defined in Section 58-17b-102; or

2869 ~~[(iii)]~~ (C) any substance that, when knowingly, intentionally, or recklessly taken into
 2870 the human body, can impair the ability of ~~[a person]~~ an individual to safely operate a motor
 2871 vehicle.

2872 ~~[(b)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any
 2873 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

2874 ~~[(2)(a) Criminal homicide is automobile homicide, a third degree felony, if the person]~~

2875 (iv) "Negligent" means simple negligence, the failure to exercise that degree of care
 2876 that reasonable and prudent persons exercise under like or similar circumstances.

2877 (b) Terms defined in Section 76-1-101.5 apply to this section.

2878 (2) An actor commits automobile homicide if the actor:

2879 (a) operates a motor vehicle in a negligent or criminally negligent manner causing the
 2880 death of another individual; and~~[-]~~

2881 (b) (i) has sufficient alcohol in ~~[his]~~ the actor's body that a subsequent chemical test

2882 shows that the [person] actor has a blood or breath alcohol concentration of .05 grams or
2883 greater at the time of the test;

2884 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
2885 and any drug to a degree that renders the [person] actor incapable of safely operating a vehicle;
2886 or

2887 (iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of
2888 operation.

2889 ~~[(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is~~
2890 ~~subsequent to a conviction as defined in Subsection 41-6a-501(2).]~~

2891 ~~[(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to~~
2892 ~~exercise that degree of care that reasonable and prudent persons exercise under like or similar~~
2893 ~~circumstances.]~~

2894 ~~[(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the~~
2895 ~~person operates a motor vehicle in a criminally negligent manner causing the death of another~~
2896 ~~and:]~~

2897 ~~[(i) has sufficient alcohol in his body that a subsequent chemical test shows that the~~
2898 ~~person has a blood or breath alcohol concentration of .05 grams or greater at the time of the~~
2899 ~~test;]~~

2900 ~~[(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol~~
2901 ~~and any drug to a degree that renders the person incapable of safely operating a vehicle; or]~~

2902 ~~[(iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of~~
2903 ~~operation.]~~

2904 ~~[(b) As used in this Subsection (3), "criminally negligent" means criminal negligence~~
2905 ~~as defined by Subsection 76-2-103(4).]~~

2906 (3) (a) (i) A violation of Subsection (2) is a third degree felony if the actor operated a
2907 motor vehicle in a negligent manner.

2908 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second
2909 degree felony if the actor operated the motor vehicle in a criminally negligent manner.

2910 (iii) Notwithstanding Subsection (3)(a)(i) or (ii), a violation of Subsection (2) is a
2911 second degree felony if:

2912 (A) the actor operated a motor vehicle in a negligent manner; and

2913 (B) conviction for the violation is subsequent to a conviction as defined in Subsection
2914 41-6a-501(2)(a).

2915 (b) An actor is guilty of a separate offense for each individual other than the actor
2916 suffering bodily injury or serious bodily injury, whether or not the injuries arise from the same
2917 episode of driving, as a result of the actor's violation of Section 41-6a-502 or death as a result
2918 of the actor's violation of this section.

2919 (4) The fact that an actor charged with violating this section is or has been legally
2920 entitled to use alcohol or a drug is not a defense.

2921 ~~[(4)]~~ (5) (a) The standards for chemical breath analysis as provided by Section
2922 41-6a-515 and the provisions for the admissibility of chemical test results as provided by
2923 Section 41-6a-516 apply to determination and proof of blood alcohol content under this
2924 section.

2925 ~~[(5)]~~ (b) Calculations of blood or breath alcohol concentration under this section shall
2926 be made in accordance with Subsection 41-6a-502(1).

2927 ~~[(6) The fact that a person charged with violating this section is or has been legally~~
2928 ~~entitled to use alcohol or a drug is not a defense.]~~

2929 ~~[(7)]~~ (6) Evidence of a defendant's blood or breath alcohol content or drug content is
2930 admissible except when prohibited by Rules of Evidence or the constitution.

2931 ~~[(8) A person is guilty of a separate offense for each victim suffering bodily injury or~~
2932 ~~serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a~~
2933 ~~result of the person's violation of this section whether or not the injuries arise from the same~~
2934 ~~episode of driving.]~~

2935 Section 58. Section **76-5-207.5** is amended to read:

2936 **76-5-207.5. Automobile homicide involving a handheld wireless communication**
2937 **device while driving.**

2938 (1) (a) As used in this section:

2939 ~~[(a)]~~ (i) "Criminally negligent" means ~~[criminal negligence as defined by]~~ the same as
2940 that term is described in Subsection 76-2-103(4).

2941 ~~[(b)]~~ (ii) "Handheld wireless communication device" ~~[has the same meaning as]~~ means
2942 the same as that term is defined in Section 41-6a-1716.

2943 ~~[(c)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any

2944 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

2945 ~~[(d)]~~ (iv) "Negligent" means simple negligence, the failure to exercise that degree of

2946 care that reasonable and prudent persons exercise under like or similar circumstances.

2947 ~~[(2) Criminal homicide is automobile homicide, a third degree felony, if the person]~~

2948 (b) Terms defined in Section 76-1-101.5 apply to this section.

2949 (2) An actor commits automobile homicide if the actor:

2950 (a) operates a moving motor vehicle;

2951 (i) (A) in a negligent manner[+]; or

2952 (B) in a criminally negligent manner; and

2953 ~~[(a)]~~ (ii) while using a handheld wireless communication device in violation of Section

2954 41-6a-1716; and

2955 (b) [causing] causes the death of another [person] individual.

2956 ~~[(3) Criminal homicide is automobile homicide, a second degree felony, if the person~~

2957 ~~operates a moving motor vehicle in a criminally negligent manner:]~~

2958 ~~[(a) while using a handheld wireless communication device in violation of Section~~

2959 ~~41-6a-1716; and]~~

2960 ~~[(b) causing the death of another person:]~~

2961 (3) (a) A violation of Subsection (2)(a)(i)(A) is a third degree felony.

2962 (b) A violation of Subsection (2)(a)(i)(B) is a second degree felony.

2963 Section 59. Section **76-5-208** is amended to read:

2964 **76-5-208. Child abuse homicide -- Penalties.**

2965 ~~[(1) Criminal homicide constitutes child abuse homicide if, under circumstances not~~

2966 ~~amounting to aggravated murder, as described in Section 76-5-202,]~~

2967 (1) (a) As used in this section, "child abuse" means an offense described in Sections

2968 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114.

2969 (b) Terms defined in Section 76-1-101.5 apply to this section.

2970 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202,

2971 an actor commits child abuse homicide if:

2972 (a) (i) the actor causes the death of [a person under] another individual who is younger

2973 than 18 years [of age] old; and

2974 (ii) the individual's death results from child abuse[, as defined in Subsection

2975 ~~76-5-109(1)~~; and
2976 ~~[(a) if]~~ (b)(i) the child abuse is done recklessly under Subsection ~~[76-5-109(2)(b)]~~
2977 76-5-109.2(3)(b);
2978 ~~[(b) if]~~ (ii) the child abuse is done with criminal negligence under Subsection
2979 ~~[76-5-109(2)(c)]~~ 76-5-109.2(3)(c); or
2980 ~~[(c) if]~~ (iii) under circumstances not amounting to the type of child abuse homicide
2981 described in Subsection ~~[(1)(a)]~~ (2)(b)(i), the child abuse is done intentionally, knowingly,
2982 recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).
2983 ~~[(2) Child abuse homicide as described in]~~ (3) (a) A violation of Subsection [(1)(a)]
2984 (2)(b)(i) is a first degree felony.
2985 ~~[(3) Child abuse homicide as described in Subsections (1)(b) and (c)]~~
2986 (b) A violation of Subsection (2)(b)(ii) or (iii) is a second degree felony.
2987 Section 60. Section **76-5-209** is amended to read:
2988 **76-5-209. Homicide by assault -- Penalty.**
2989 (1) Terms defined in Section 76-1-101.5 apply to this section.
2990 ~~[(1) A person]~~ (2) An actor commits homicide by assault if, under circumstances not
2991 amounting to aggravated murder, murder, or manslaughter~~[, a person]~~;
2992 (a) the actor causes the death of another individual; and
2993 (b) the actor causes the other individual's death while intentionally or knowingly
2994 attempting, with unlawful force or violence, to do bodily injury to ~~[another]~~ the other
2995 individual.
2996 ~~[(2)]~~ (3) Homicide by assault is a third degree felony.
2997 Section 61. Section **76-5-301** is amended to read:
2998 **76-5-301. Kidnapping.**
2999 (1) (a) As used in this section:
3000 (i) "Against the will of an individual" includes without the consent of the legal
3001 guardian, caretaker, or custodian of an individual who is a dependent adult.
3002 (ii) "Dependent adult" means the same as that term is defined in Section 76-5-111.
3003 (iii) "Minor" means an individual who is 14 years old or older but younger than 18
3004 years old.
3005 (b) Terms defined in Section 76-1-101.5 apply to this section.

[~~(1)~~] (2) An actor commits kidnapping if the actor intentionally or knowingly, without authority of law, and against the will of [~~the victim~~] an individual:

(a) detains or restrains the [~~victim~~] individual for any substantial period of time;

(b) detains or restrains the [~~victim~~] individual in circumstances exposing the [~~victim~~] individual to risk of bodily injury;

(c) holds the [~~victim~~] individual in involuntary servitude;

(d) detains or restrains a minor without the consent of the minor's parent or legal guardian or the consent of a person acting in loco parentis[~~if the minor is 14 years of age or older but younger than 18 years of age~~]; or

(e) moves the [~~victim~~] individual any substantial distance or across a state line.

[~~(2) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.~~]

(3) [~~Kidnapping~~] A violation of Subsection (2) is a second degree felony.

Section 62. Section ~~76-5-301.1~~ is amended to read:

76-5-301.1. Child kidnapping.

(1) (a) As used in this section, "child" means an individual under 14 years old.

(b) Terms defined in Section 76-1-101.5 apply to this section.

[~~(1)~~] (2) An actor commits child kidnapping if the actor intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child [~~under the age of 14~~] without the consent of the [~~victim's~~] child's parent or guardian, or the consent of a person acting in loco parentis.

[~~(2) Violation of Section 76-5-303 is not a violation of this section.~~]

(3) [~~Child kidnapping~~] A violation of Subsection (2) is a first degree felony [~~punishable by a term of imprisonment of~~].

(4) An actor convicted of a violation of this section shall be sentenced to imprisonment of:

(a) except as provided in Subsection [~~(3)~~] (4)(b), [~~(3)~~] (4)(c), or [~~(4)~~] (5), not less than 15 years and which may be for life;

(b) except as provided in Subsection [~~(3)~~] (4)(c) or [~~(4)~~] (5), life without parole, if the trier of fact finds that during the course of the commission of the child kidnapping the

3037 ~~[defendant]~~ actor caused serious bodily injury to another; or

3038 (c) life without parole, if the trier of fact finds that at the time of the commission of the

3039 child kidnapping the ~~[defendant]~~ actor was previously convicted of a grievous sexual offense.

3040 ~~[(4)]~~ (5) If, when imposing a sentence under Subsection ~~[(3)]~~ (4)(a) or (b), a court finds

3041 that a lesser term than the term described in Subsection ~~[(3)]~~ (4)(a) or (b) is in the interests of

3042 justice and states the reasons for this finding on the record, the court may impose a term of

3043 imprisonment of not less than:

3044 (a) for purposes of Subsection ~~[(3)]~~ (4)(b), 15 years and which may be for life; or

3045 (b) for purposes of Subsection ~~[(3)]~~ (4)(a) or (b):

3046 (i) 10 years and which may be for life; or

3047 (ii) six years and which may be for life.

3048 ~~[(5)]~~ (6) The provisions of Subsection ~~[(4)]~~ (5) do not apply when a person is

3049 sentenced under Subsection ~~[(3)]~~ (4)(c).

3050 ~~[(6)]~~ (7) Subsections ~~[(3)]~~ (4)(b) and ~~[(3)]~~ (4)(c) do not apply if the defendant was

3051 younger than 18 years ~~[of age]~~ old at the time of the offense.

3052 ~~[(7)]~~ (8) Imprisonment under this section is mandatory in accordance with Section

3053 76-3-406.

3054 (9) A violation of Section 76-5-303 is not a violation of this section.

3055 Section 63. Section **76-5-302** is amended to read:

3056 **76-5-302. Aggravated kidnapping.**

3057 (1) (a) As used in this section, "in the course of committing unlawful detention or

3058 kidnapping" means in the course of committing, attempting to commit, or in the immediate

3059 flight after the attempt or commission of a violation of:

3060 (i) Section 76-5-301, kidnapping; or

3061 (ii) Section 76-5-304, unlawful detention.

3062 (b) Terms defined in Section 76-1-101.5 apply to this section.

3063 ~~[(1)]~~ (2) An actor commits aggravated kidnapping if the actor, in the course of

3064 committing unlawful detention or kidnapping:

3065 (a) uses or threatens to use a dangerous weapon ~~[as defined in Section 76-1-601];~~ or

3066 (b) acts with the intent to:

3067 (i) ~~[to]~~ hold the victim for ransom or reward, ~~[or]~~ as a shield or hostage, or to compel a

third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) [to] facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) [to] hinder or delay the discovery of or reporting of a felony;

(iv) [to] inflict bodily injury on or to terrorize the victim or another individual;

(v) [to] interfere with the performance of any governmental or political function; or

(vi) [to] commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses.

~~[(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:]~~

~~[(a) Section 76-5-301, kidnapping; or]~~

~~[(b) Section 76-5-304, unlawful detention.]~~

~~[(3) Aggravated kidnapping]~~ (3) (a) A violation of Subsection (2) in the course of committing unlawful detention is a third degree felony.

~~[(4) Aggravated kidnapping]~~ (b) A violation of Subsection (2) in the course of committing kidnapping is a first degree felony [punishable by a term of imprisonment of:].

(4) An actor convicted of a violation of this section shall be sentenced to imprisonment of:

(a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and which may be for life;

(b) except as provided in Subsection (4)(c) or (5), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to the victim or another individual; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

(5) If, when imposing a sentence under Subsection (4)(a) or (b), a court finds that a lesser term than the term described in Subsection (4)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (4)(b), 15 years and which may be for life; or

3099 (b) for purposes of Subsection (4)(a) or (b):
3100 (i) 10 years and which may be for life; or
3101 (ii) six years and which may be for life.
3102 (6) The provisions of Subsection (5) do not apply when a ~~[person]~~ defendant is
3103 sentenced under Subsection (4)(c).
3104 (7) Subsections (4)(b) and (c) do not apply if the ~~[defendant]~~ actor was younger than 18
3105 years ~~[of age]~~ old at the time of the offense.
3106 (8) Imprisonment under Subsection (4) is mandatory in accordance with Section
3107 76-3-406.
3108 Section 64. Section **76-5-303** is amended to read:
3109 **76-5-303. Custodial interference.**
3110 (1) (a) As used in this section:
3111 ~~[(a)]~~ (i) "Child" means ~~[a person]~~ an individual under ~~[the age of]~~ 18 years old.
3112 ~~[(b)]~~ (ii) "Custody" means court-ordered physical custody entered by a court of
3113 competent jurisdiction.
3114 ~~[(c)]~~ (iii) "Visitation" means court-ordered parent-time or visitation entered by a court
3115 of competent jurisdiction.
3116 (b) Terms defined in Section 76-1-101.5 apply to this section.
3117 (2) (a) ~~[A person]~~ An actor who is entitled to custody of a child ~~[is guilty of]~~ commits
3118 custodial interference if, during a period of time when another ~~[person]~~ individual is entitled to
3119 visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds the child
3120 from the ~~[person]~~ individual entitled to visitation of the child, with the intent to interfere with
3121 the visitation of the child.
3122 (b) ~~[A person]~~ An actor who is entitled to visitation of a child ~~[is guilty of]~~ commits
3123 custodial interference if, during a period of time when the ~~[person]~~ individual is not entitled to
3124 visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds the child
3125 from ~~[a person]~~ an individual who is entitled to custody of the child, with the intent to interfere
3126 with the custody of the child.
3127 (3) (a) [Except as provided in Subsection (4) or (5), custodial interference] A violation
3128 of Subsection (2) is a class B misdemeanor.
3129 ~~[(4) Except as provided in Subsection (5), the actor described in Subsection (2) is~~

3130 ~~guilty of]~~

3131 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A

3132 misdemeanor if the actor:

3133 ~~[(a)]~~ (i) commits custodial interference; and

3134 ~~[(b)]~~ (ii) has been convicted of custodial interference at least twice in the two-year

3135 period immediately preceding the day on which the commission of custodial interference

3136 described in Subsection ~~[(4)]~~ (3)(a) occurs.

3137 ~~[(5) Custodial interference]~~ (c) Notwithstanding Subsections (3)(a) and (b), a violation

3138 of Subsection (2) is a felony of the third degree if, during the course of the custodial

3139 interference, the actor ~~[described in Subsection (2)]~~ removes, causes the removal, or directs the

3140 removal of the child from the state.

3141 ~~[(6)]~~ (4) In addition to the affirmative defenses described in Section 76-5-305, it is an

3142 affirmative defense to the crime of custodial interference that:

3143 (a) the action is consented to by the ~~[person]~~ individual whose custody or visitation of

3144 the child was interfered with; or

3145 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a

3146 child from abuse, including sexual abuse; and

3147 (ii) before engaging in the action, the ~~[person]~~ actor reports the ~~[person's]~~ actor's

3148 intention to engage in the action, and the basis for the belief described in Subsection ~~[(6)]~~

3149 ~~(4)~~(b)(i), to the Division of Child and Family Services or law enforcement.

3150 Section 65. Section **76-5-303.5** is amended to read:

3151 **76-5-303.5. Notification of conviction of custodial interference.**

3152 (1) As used in this section:

3153 (a) "Convicted" means ~~[that a person has received a conviction.]~~ a conviction by plea

3154 or verdict or adjudication in juvenile court of a crime or offense.

3155 (ii) "Convicted" includes:

3156 (A) a plea of guilty or guilty and mentally ill;

3157 (B) a plea of no contest; and

3158 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas

3159 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in

3160 accordance with the plea in abeyance agreement.

~~[(b) "Conviction" is as defined in Section 53-3-102.]~~

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) If ~~[a person]~~ an individual is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

(a) a class B misdemeanor, under Subsection 76-5-303(3)(a);

(b) a class A misdemeanor, under Subsection 76-5-303~~[(4)]~~(3)(b); or

(c) a felony, under Subsection 76-5-303~~[(5)]~~(3)(c).

Section 66. Section **76-5-304** is amended to read:

76-5-304. Unlawful detention and unlawful detention of a minor.

(1) As used in this section:

(a) acting "against the will of the victim" includes acting without the consent of the legal guardian, caretaker, or custodian of an individual who is:

(i) a dependent adult; or

(ii) a minor who is 14 or 15 years old.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~[(+)]~~ (2) (a) An actor commits unlawful detention if the actor intentionally or knowingly, without authority of law, and against the will of ~~[the victim]~~ an individual, detains or restrains the ~~[victim under circumstances not constituting a violation of:]~~ individual.

~~[(a) kidnapping, Section 76-5-301; or]~~

~~[(b) child kidnapping, Section 76-5-301.1.]~~

~~[(2)]~~ (b) An actor commits unlawful detention of a minor if the actor is at least four or more years older than the minor, and intentionally or knowingly, without authority of law, and against the will of the ~~[victim]~~ minor, coerces or exerts influence over the ~~[victim]~~ minor with the intent to cause the ~~[victim]~~ minor to remain with the actor for an unreasonable period of time under the circumstances~~[-and:].~~

~~[(a) the act is under circumstances not constituting a violation of:]~~

~~[(i) kidnapping, Section 76-5-301; or]~~

~~[(ii) child kidnapping, Section 76-5-301.1; and]~~

~~[(b) the actor is at least four or more years older than the victim.]~~

~~[(3) As used in this section, acting "against the will of the victim" includes acting~~

3192 ~~without the consent of the legal guardian or custodian of a victim who is:]~~

3193 ~~[(a) a mentally incompetent person; or]~~

3194 ~~[(b) a minor who is 14 or 15 years of age.]~~

3195 ~~[(4) Unlawful detention]~~ (3) A violation of Subsection (2) is a class B misdemeanor.

3196 (4) If the conduct of the actor amounts to a violation under one of the following, the

3197 actor shall be charged with the violation and not under Subsection (2)(a) or (2)(b):

3198 (i) kidnapping, as described in Section 76-5-301; or

3199 (ii) child kidnapping, as described in Section 76-5-301.1.

3200 Section 67. Section **76-5-305** is amended to read:

3201 **76-5-305. Defenses.**

3202 (1) It is a defense under this part that:

3203 (a) the actor was acting under a reasonable belief that:

3204 (i) the conduct was necessary to protect any ~~[person]~~ individual from imminent bodily
3205 injury or death; or

3206 (ii) the detention or restraint was authorized by law; or

3207 (b) the alleged victim is younger than 18 years ~~[of age]~~ old or is ~~[mentally~~

3208 ~~incompetent]~~ a dependent adult, as defined in Section 76-5-111, and the actor was acting under

3209 a reasonable belief that the custodian, guardian, caretaker, legal guardian, custodial parent, or

3210 person acting in loco parentis to the victim would, if present, have consented to the actor's

3211 conduct.

3212 (2) Subsection (1)(b) may not be used as a defense to conduct described in Section

3213 76-5-308.5.

3214 Section 68. Section **76-5-307** is amended to read:

3215 **76-5-307. Definitions.**

3216 As used in Sections 76-5-308 through ~~[76-5-310]~~ 76-5-310.1 of this part:

3217 (1) "Child" means ~~[a person]~~ an individual younger than 18 years ~~[of age]~~ old.

3218 (2) "Commercial purpose" includes direct or indirect participation in or facilitation of
3219 the transportation of one or more ~~[persons]~~ individuals for the purpose of:

3220 (a) charging or obtaining a fee for the transportation; or

3221 (b) obtaining, exchanging, or receiving any thing or item of value or an attempt to

3222 conduct any of these activities.

(3) "Facilitation" regarding transportation under Subsection (2) includes providing:

(a) travel arrangement services;

(b) payment for the costs of travel; or

(c) property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making lodging available, including by rent, lease, or sale.

(4) "Family member" means ~~[a person's]~~ an individual's parent, grandparent, sibling, or any other ~~[person]~~ individual related to the ~~[person]~~ individual by consanguinity or affinity to the second degree.

Section 69. Section **76-5-308** is amended to read:

76-5-308. Human trafficking for labor.

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

~~[(+)]~~ (2) An actor commits human trafficking for labor ~~[or sexual exploitation]~~ if the actor recruits, harbors, transports, obtains, patronizes, or solicits ~~[a person]~~ an individual through the use of force, fraud, or coercion, which may include:

(a) threatening serious harm to, or physical restraint against, that ~~[person]~~ individual or ~~[a third person]~~ another individual;

(b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government-issued identification document;

(c) abusing or threatening abuse of the law or legal process against the ~~[person or a third person]~~ individual or another individual;

(d) using a condition of ~~[a person]~~ an individual being a debtor due to a pledge of the ~~[debtor's]~~ individual's personal services or the personal services of ~~[a person]~~ an individual under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause ~~[a person]~~ an individual to believe that if the ~~[person]~~ individual did not enter into or continue in a condition of servitude, ~~[that person or a third person]~~ the individual or another individual would suffer serious harm or physical restraint, or would be threatened with abuse of legal process; or

3254 (f) creating or exploiting a relationship where the ~~[person]~~ individual is dependent ~~[on]~~
 3255 upon the actor.

3256 (3) A violation of Subsection (2) is a second degree felony.

3257 ~~[(2)-(a)]~~ (4) Human trafficking for labor includes any labor obtained through force,
 3258 fraud, or coercion as described in Subsection ~~[(1)]~~ (2).

3259 ~~[(b) Human trafficking for sexual exploitation includes all forms of commercial sexual~~
 3260 ~~activity, which may include the following conduct when the person acts under force, fraud, or~~
 3261 ~~coercion as described in Subsection (1):]~~

3262 ~~[(i) sexually explicit performance;]~~

3263 ~~[(ii) prostitution;]~~

3264 ~~[(iii) participation in the production of pornography;]~~

3265 ~~[(iv) performance in strip clubs; and]~~

3266 ~~[(v) exotic dancing or display.]~~

3267 ~~[(3) A person commits human smuggling by transporting or procuring the~~
 3268 ~~transportation for one or more persons for a commercial purpose, knowing or having reason to~~
 3269 ~~know that the person or persons transported or to be transported are not:]~~

3270 ~~[(a) citizens of the United States;]~~

3271 ~~[(b) permanent resident aliens; or]~~

3272 ~~[(c) otherwise lawfully in this state or entitled to be in this state.]~~

3273 Section 70. Section **76-5-308.1** is enacted to read:

3274 **76-5-308.1. Human trafficking for sexual exploitation.**

3275 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3276 (2) An actor commits human trafficking for sexual exploitation if the actor recruits,
 3277 harbors, transports, obtains, patronizes, or solicits an individual through the use of force, fraud,
 3278 or coercion, which may include:

3279 (a) threatening serious harm to, or physical restraint against, that individual or another
 3280 individual;

3281 (b) destroying, concealing, removing, confiscating, or possessing any passport,
 3282 immigration document, or other government-issued identification document;

3283 (c) abusing or threatening abuse of the law or legal process against the individual or
 3284 another individual;

(d) using a condition of an individual being a debtor due to a pledge of the individual's personal services or the personal services of an individual under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause an individual to believe that if the individual did not enter into or continue in a condition of servitude, the individual or another individual would suffer serious harm or physical restraint, or would be threatened with abuse of legal process; or

(f) creating or exploiting a relationship where the individual is dependent upon the actor.

(3) A violation of Subsection (2) is a second degree felony.

(4) Human trafficking for sexual exploitation includes all forms of commercial sexual activity, which may include the following conduct when the person acts under force, fraud, or coercion as described in Subsection (1):

(i) sexually explicit performance;

(ii) prostitution;

(iii) participation in the production of pornography;

(iv) performance in strip clubs; and

(v) exotic dancing or display.

Section 71. Section **76-5-308.3** is enacted to read:

76-5-308.3. Human smuggling -- Penalty.

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits human smuggling if the actor transports or procures the transportation for one or more individuals for a commercial purpose, knowing or having reason to know that the individual or individuals transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

(3) A violation of Subsection (2) is a second degree felony.

Section 72. Section **76-5-308.5** is amended to read:

76-5-308.5. Human trafficking of a child -- Penalties.

~~[(1) "Commercial]~~ (1) (a) As used in this section, "commercial sexual activity with a child" means any sexual act with a child, ~~[on account of]~~ for which anything of value is given to or received by any person.

(b) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits human trafficking of a child if the actor recruits, harbors, transports, obtains, patronizes, or solicits a child for sexual exploitation or forced labor.

(3) A violation of Subsection (2) is a first degree felony.

~~[(3)]~~ (4) (a) Human trafficking of a child for labor includes any labor obtained through force, fraud, ~~[and]~~ or coercion as described in Section 76-5-308.

(b) Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child, including sexually explicit performance, prostitution, participation in the production of pornography, performance in a strip club, and exotic dancing or display as described in Section 76-5-308.1.

~~[(4) Human trafficking of a child in violation of this section is a first degree felony.]~~

Section 73. Section **76-5-309** is amended to read:

76-5-309. Benefitting from trafficking and human smuggling -- Penalties.

~~[(1) Human trafficking for labor and human trafficking for sexual exploitation are each a second degree felony, except under Section 76-5-310.]~~

~~[(2) Human smuggling under Section 76-5-308 of one or more persons is a second degree felony, except under Section 76-5-310.]~~

~~[(3) Human trafficking for labor or for sexual exploitation, human trafficking of a child, and human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.]~~

~~[(4) Under circumstances not amounting to aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4)(h), a person who]~~

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor is a party to the offense if the actor benefits, receives, or exchanges anything of value from knowing participation in:

(a) human trafficking for labor ~~[or for sexual exploitation]~~ in violation of Section 76-5-308 ~~[is guilty of a second degree felony];~~

3347 (b) human smuggling [~~is guilty of a third degree felony, and~~] in violation of Section
 3348 76-5-308.3;

3349 (c) human trafficking of a child [~~is guilty of a first degree felony.~~] in violation of
 3350 Section 76-5-308.5; and

3351 (d) human trafficking for sexual exploitation in violation of Section 76-5-308.1.

3352 (3) (a) A violation of Subsection (2)(a) or (2)(d) is a second degree felony.

3353 (b) A violation of Subsection (2)(b) is a third degree felony.

3354 (c) A violation of Subsection (2)(c) is a first degree felony.

3355 ~~[(5)]~~ (4) ~~[A person]~~ An actor commits a separate offense of human trafficking, human
 3356 trafficking of a child, or human smuggling for each ~~[person]~~ individual who is smuggled or
 3357 trafficked under Section 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, [or] 76-5-310, or
 3358 76-5-310.1.

3359 Section 74. Section **76-5-310** is amended to read:

3360 **76-5-310. Aggravated human trafficking -- Penalties.**

3361 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3362 ~~[(1)]~~ (2) An actor commits aggravated human trafficking for labor or sexual
 3363 exploitation [~~or aggravated human smuggling~~] if, in the course of committing an offense under
 3364 Section 76-5-308 or 76-5-308.1, the offense:

3365 (a) results in the death of ~~[the]~~ a trafficked ~~[or smuggled person]~~ individual;

3366 (b) results in serious bodily injury of ~~[the]~~ a trafficked ~~[or smuggled person]~~ individual;

3367 (c) involves:

3368 (i) rape under Section 76-5-402;

3369 (ii) rape of a child under Section 76-5-402.1;

3370 (iii) object rape under Section 76-5-402.2;

3371 (iv) object rape of a child under Section 76-5-402.3;

3372 (v) forcible sodomy under Section 76-5-403;

3373 (vi) sodomy on a child under Section 76-5-403.1;

3374 (vii) aggravated sexual abuse of a child under Section ~~[76-5-404.1]~~ 76-5-404.3; or

3375 (viii) aggravated sexual assault under Section 76-5-405;

3376 (d) involves the trafficking of 10 or more ~~[victims]~~ individuals; or

3377 (e) involves ~~[a victim]~~ an individual trafficked for longer than 30 consecutive days.

~~[(2) An actor commits aggravated human smuggling if the actor commits human smuggling under Section 76-5-308 and any human being whom the person engages in smuggling is:]~~

~~[(a) a child; and]~~

~~[(b) not accompanied by a family member who is 18 years of age or older.]~~

(3) ~~[(a) Aggravated human trafficking]~~ A violation of Subsection (2) is a first degree felony.

~~[(b) Aggravated human smuggling is a first degree felony.]~~

~~[(c)]~~ (4) Aggravated human trafficking [and aggravated human smuggling are each] is a separate offense from any other crime committed in relationship to the commission of [either of these offenses] the offense.

Section 75. Section **76-5-310.1** is enacted to read:

76-5-310.1. Aggravated human smuggling -- Penalties.

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits aggravated human smuggling if, in the course of committing an offense under Section 76-5-308.3, the offense:

(a) results in the death of a smuggled individual;

(b) results in serious bodily injury to a smuggled individual;

(c) involves the smuggling of a child; or

(d) involves:

(i) rape under Section 76-5-402;

(ii) rape of a child under Section 76-5-402.1;

(iii) object rape under Section 76-5-402.2;

(iv) object rape of a child under Section 76-5-402.3;

(v) forcible sodomy under Section 76-5-403;

(vi) sodomy on a child under Section 76-5-403.1;

(vii) aggravated sexual abuse of a child under Section 76-5-404.1; or

(viii) aggravated sexual assault under Section 76-5-405.

(3) A violation of Subsection (2) is a first degree felony.

(4) Aggravated human smuggling is a separate offense from any other crime committed in relationship to the offense.

Section 76. Section **76-5-311** is amended to read:

76-5-311. Human trafficking of a vulnerable adult -- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Commercial sexual activity with a vulnerable adult" means any sexual act with a vulnerable adult for which anything of value is given to or received by any individual.

~~[(b)]~~ (ii) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111(1).

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits human trafficking of a vulnerable adult if the actor:

(a) recruits, harbors, transports, or obtains a vulnerable adult for sexual exploitation or forced labor; or

(b) patronizes or solicits a vulnerable adult for sexual exploitation or forced labor when the actor knew or should have known of the victim's vulnerability.

(3) A violation of Subsection (2) is a first degree felony.

~~[(3)]~~ (4) (a) Human trafficking of a vulnerable adult for labor includes any labor obtained through force, fraud, or coercion as described in Section 76-5-308.

(b) Human trafficking of a vulnerable adult for sexual exploitation includes all forms of commercial sexual activity with a vulnerable adult involving:

(i) sexually explicit performances;

(ii) prostitution;

(iii) participation in the production of pornography;

(iv) performance in a strip club; or

(v) exotic dancing or display.

~~[(4) Human trafficking of a vulnerable adult in violation of this section is a first degree felony.]~~

Section 77. Section **76-5-401** is amended to read:

76-5-401. Unlawful sexual activity with a minor -- Penalties -- Evidence of age raised by defendant -- Limitations.

(1) (a) ~~[For purposes of]~~ As used in this section ~~["minor" is a person]~~, "minor" means an individual who is 14 years ~~[of age]~~ old or older, but younger than 16 years ~~[of age]~~ old, at the time the sexual activity described in ~~[this section]~~ Subsection (2) occurred.

3440 (b) Terms defined in Section 76-1-101.5 apply to this section.

3441 (2) (a) ~~[A person]~~ Except as provided in Subsection (4), an actor 18 years old or older
 3442 commits unlawful sexual activity with a minor if~~[, under circumstances not amounting to rape,~~
 3443 ~~in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible~~
 3444 ~~sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section~~
 3445 ~~76-5-405;]~~ the actor:

3446 ~~[(a)]~~ (i) has sexual intercourse with the minor;

3447 ~~[(b)]~~ (ii) engages in any sexual act with the minor involving the genitals of ~~[one~~
 3448 ~~person]~~ an individual and the mouth or anus of another ~~[person, regardless of the sex of either~~
 3449 ~~participant]~~ individual; or

3450 ~~[(c)]~~ (iii) causes the penetration, however slight, of the genital or anal opening of the
 3451 minor by ~~[any]~~ a foreign object, substance, instrument, or device, including a part of the human
 3452 body, with the intent to cause substantial emotional or bodily pain to any ~~[person]~~ individual or
 3453 with the intent to arouse or gratify the sexual desire of any ~~[person, regardless of the sex of any~~
 3454 ~~participant]~~ individual.

3455 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
 3456 violation of Subsection (2)(a)(ii).

3457 (3) (a) ~~[Except under Subsection (3)(b) or (c), a]~~ A violation of Subsection (2) is a
 3458 third degree felony.

3459 (b) (i) ~~[If]~~ Notwithstanding Subsection (3)(a), if the defendant establishes by a
 3460 preponderance of the evidence the mitigating factor that the defendant is less than four years
 3461 older than the minor at the time the sexual activity occurred, the offense is a class B
 3462 misdemeanor.

3463 (ii) An offense under ~~[this]~~ Subsection (3)(b)(i) is not subject to registration under
 3464 Subsection 77-41-102(17)(a)(vii).

3465 (c) (i) ~~[If]~~ Notwithstanding Subsection (3)(a) or (b), if the defendant establishes by a
 3466 preponderance of the evidence the mitigating factor that the defendant was younger than 21
 3467 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.

3468 (ii) An offense under ~~[this]~~ Subsection (3)(c)(i) is not subject to registration under
 3469 Subsection 77-41-102(17)(a)(vii).

3470 (4) If the conduct of an actor 18 years old or older amounts to a violation under one or

more of the following, or an attempt to violate one or more of the following, the actor shall be charged with the violation and not under Subsection (2)(a):

(a) rape, in violation of Section 76-5-402;

(b) object rape, in violation of Section 76-5-402.2;

(c) forcible sodomy, in violation of Section 76-5-403; or

(d) aggravated sexual assault, in violation of Section 76-5-405.

Section 78. Section **76-5-401.1** is amended to read:

76-5-401.1. Sexual abuse of a minor -- Penalties -- Limitations.

~~[(1) For purposes of this section "minor" is]~~

(1) (a) As used in this section:

(i) "Indecent liberties" means:

(A) the actor touching another individual's genitals, anus, buttocks, pubic area, or female breast;

(B) causing any part of an individual's body to touch the actor's or another's genitals, pubic area, anus, buttocks, or female breast;

(C) simulating or pretending to engage in sexual intercourse with another individual, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or

(D) causing an individual to simulate or pretend to engage in sexual intercourse with the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.

(ii) "Minor means an individual who is 14 years ~~[of age]~~ old or older, but younger than 16 years ~~[of age]~~ old, at the time the sexual activity described in ~~[this section]~~ Subsection (2) occurred.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) ~~[An individual]~~ Except as provided in Subsection (4), an actor commits sexual abuse of a minor if the ~~[individual]~~ actor:

(i) is four years or more older than the minor; and~~[, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the individual]~~

(ii) with the intent to cause substantial emotional or bodily pain to any individual, or with the intent to arouse or gratify the sexual desire of any individual:

(A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor~~[-or]~~;

(B) touches the breast of a female minor~~[-]~~; or

(C) otherwise takes indecent liberties with the minor~~[-with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual regardless of the sex of any participant.]~~.

(b) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) A violation of ~~[this section is]~~ Subsection (2)(a) is:

(a) a class A misdemeanor; and

(b) is not subject to registration under Subsection 77-41-102(17)(a)(viii) on a first offense if the offender was younger than 21 years ~~[of age]~~ old at the time of the offense.

(4) If the conduct of an actor who is four years old or older than a minor amounts to a violation under one or more of the following, or an attempt to violate one or more of the following, the actor shall be charged with the violation and not under Subsection (2)(a):

(a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

(b) rape, in violation of Section 76-5-402;

(c) object rape, in violation of Section 76-5-402.2;

(d) forcible sodomy, in violation of Section 76-5-403; or

(e) aggravated sexual assault, in violation of Section 76-5-405.

Section 79. Section ~~76-5-401.2~~ is amended to read:

76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old -- Penalties -- Limitations.

(1) (a) As used in this section~~[-"minor"]~~:

(i) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(ii) "Minor" means an individual who is 16 years ~~[of age]~~ old or older, but younger than 18 years ~~[of age]~~ old, at the time the sexual conduct described in Subsection (2) occurred.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) ~~[An individual]~~ Except as provided in Subsection (4), an actor commits unlawful sexual conduct with a minor if~~[-under circumstances not amounting to an offense]~~

3533 ~~listed under Subsection (3), an individual who is]~~ the actor:

3534 (i) (A) is seven or more years older but less than 10 years older than the minor at the
3535 time of the sexual conduct;

3536 (B) engages in any conduct listed in Subsection (2)(b)[, and the individual]; and

3537 (C) knew or reasonably should have known the age of the minor; or

3538 (ii) (A) is 10 or more years older than the minor at the time of the sexual conduct; and

3539 (B) engages in any conduct listed in Subsection (2)(b).

3540 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the ~~[individual]~~

3541 actor:

3542 (i) has sexual intercourse with the minor;

3543 (ii) engages in any sexual act with the minor involving the genitals of one individual
3544 and the mouth or anus of another individual~~[, regardless of the sex of either participant];~~

3545 (iii) (A) causes the penetration, however slight, of the genital or anal opening of the
3546 minor by any foreign object, substance, instrument, or device, including a part of the human
3547 body[;]; and

3548 (B) causes the penetration with the intent to cause substantial emotional or bodily pain
3549 to any individual or with the intent to arouse or gratify the sexual desire of any individual~~;~~
3550 ~~regardless of the sex of any participant]; or~~

3551 (iv) touches with the intent to cause substantial emotional or bodily pain to any
3552 individual or with the intent to arouse or gratify the sexual desire of any individual:

3553 (A) the anus, buttocks, pubic area, or any part of the genitals of the minor[; or touches];

3554 (B) the breast of a female minor[;]; or

3555 (C) otherwise takes indecent liberties with the minor[; with the intent to cause
3556 substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the
3557 sexual desire of any individual regardless of the sex of any participant].

3558 ~~[(3) The offenses referred to in Subsection (2) are:]~~

3559 ~~[(a) (i) rape, in violation of Section 76-5-402;]~~

3560 ~~[(ii) object rape, in violation of Section 76-5-402.2;]~~

3561 ~~[(iii) forcible sodomy, in violation of Section 76-5-403;]~~

3562 ~~[(iv) forcible sexual abuse, in violation of Section 76-5-404; or]~~

3563 ~~[(v) aggravated sexual assault, in violation of Section 76-5-405; or]~~

3564 ~~[(b) an attempt to commit any offense under Subsection (3)(a).]~~
 3565 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
 3566 relevant element of a violation of Subsection (2)(a).
 3567 ~~[(4)] (3) (a)~~ A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
 3568 ~~[(5)] (b)~~ A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
 3569 (4) If the conduct of the actor described in Subsection (2)(a) amounts to a violation
 3570 under one or more of the following, or an attempt to violate one or more of the following, the
 3571 actor shall be charged with the violation and not under Subsection (2)(a):
 3572 (a) rape, in violation of Section 76-5-402;
 3573 (b) object rape, in violation of Section 76-5-402.2;
 3574 (c) forcible sodomy, in violation of Section 76-5-403;
 3575 (d) forcible sexual abuse, in violation of Section 76-5-404; or
 3576 (e) aggravated sexual assault, in violation of Section 76-5-405.
 3577 Section 80. Section **76-5-401.3** is amended to read:
 3578 **76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.**
 3579 (1) (a) As used in this section~~[(a) "Adolescent"]~~, "adolescent" means an individual in
 3580 the transitional phase of human physical and psychological growth and development between
 3581 childhood and adulthood who is 12 years old or older, but ~~[under]~~ younger than 18 years old.
 3582 ~~[(b) "Unlawful adolescent sexual activity" means sexual activity between adolescents~~
 3583 ~~under circumstances not amounting to:]~~
 3584 ~~[(i) rape, in violation of Section 76-5-402;]~~
 3585 ~~[(ii) rape of a child, in violation of Section 76-5-402.1;]~~
 3586 ~~[(iii) object rape, in violation of Section 76-5-402.2;]~~
 3587 ~~[(iv) object rape of a child, in violation of Section 76-5-402.3;]~~
 3588 ~~[(v) forcible sodomy, in violation of Section 76-5-403;]~~
 3589 ~~[(vi) sodomy on a child, in violation of Section 76-5-403.1;]~~
 3590 ~~[(vii) sexual abuse of a child, in violation of Section 76-5-404;]~~
 3591 ~~[(viii) aggravated sexual assault, in violation of Section 76-5-405; or]~~
 3592 ~~[(ix) incest, in violation of Section 76-7-102.]~~
 3593 ~~[(2) Unlawful adolescent sexual activity is punishable as a:]~~
 3594 (b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Except as provided in Subsection (4), an actor commits unlawful sexual activity if the actor:

(a) is an adolescent; and

(b) has sexual activity with another adolescent.

(3) A violation of Subsection (2) is a:

(a) third degree felony if an [adolescent] actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old;

(b) third degree felony if an [adolescent] actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

(c) class A misdemeanor if an [adolescent] actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

(d) class A misdemeanor if an [adolescent] actor who is 14 or 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

(e) class B misdemeanor if an [adolescent] actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 14 years old;

(f) class B misdemeanor if an [adolescent] actor who is 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

(g) class C misdemeanor if an [adolescent] actor who is 12 or 13 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and

(h) class C misdemeanor if an [adolescent] actor who is 14 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old.

(4) If the conduct of the actor described in Subsection (2) amounts to a violation under one or more of the following, or an attempt to violate one or more of the following the actor shall be charged with the violation and not under Subsection (2):

(a) rape, in violation of Section 76-5-402;

(b) rape of a child, in violation of Section 76-5-402.1;

(c) object rape, in violation of Section 76-5-402.2;

(d) object rape of a child, in violation of Section 76-5-402.3;

(e) forcible sodomy, in violation of Section 76-5-403;

(f) sodomy on a child, in violation of Section 76-5-403.1;

(g) sexual abuse of a child, in violation of Section 76-5-404;

3626 (h) aggravated sexual assault, in violation of Section 76-5-405; or

3627 (i) incest, in violation of Section 76-7-102.

3628 ~~[(3)]~~ (5) An offense under this section is not eligible for a nonjudicial adjustment under
3629 Section 80-6-304 or a referral to a youth court under Section 80-6-902.

3630 ~~[(4)]~~ (6) Except for an offense that is transferred to a district court by the juvenile court
3631 in accordance with Section 80-6-504, the district court may enter any sentence or combination
3632 of sentences that would have been available in juvenile court but for the delayed reporting or
3633 delayed filing of the information in the district court.

3634 ~~[(5)]~~ (7) An offense under this section is not subject to registration under Subsection
3635 77-41-102(17).

3636 Section 81. Section **76-5-402** is amended to read:

3637 **76-5-402. Rape -- Penalties.**

3638 (1) Terms defined in Section 76-1-101.5 apply to this section.

3639 ~~[(1) A person]~~ (2) (a) An actor commits rape ~~[when]~~ if the actor has sexual intercourse
3640 with another ~~[person]~~ individual without ~~[the victim's]~~ the individual's consent.

3641 (b) Any sexual penetration, however slight, is sufficient to constitute the relevant
3642 element of a violation of Subsection (2)(a).

3643 ~~[(2)]~~ (c) This section applies whether or not the actor is married to the ~~[victim]~~
3644 individual.

3645 (3) [Rape] A violation of Subsection (2) is a felony of the first degree, punishable by a
3646 term of imprisonment of:

3647 (a) except as provided in Subsection (3)(b) or (c), not less than five years and which
3648 may be for life;

3649 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,
3650 if the trier of fact finds that:

3651 (i) during the course of the commission of the rape the defendant caused serious bodily
3652 injury to [another] the victim; or

3653 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
3654 [of age] old and was previously convicted of a grievous sexual offense; or

3655 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3656 rape the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a ~~[person]~~ defendant is sentenced under Subsection (3)(a) or (c).

(6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Section 82. Section ~~76-5-402.1~~ is amended to read:

76-5-402.1. Rape of a child -- Penalties.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person]~~ (2) (a) An actor commits rape of a child ~~[when the person]~~ if the actor has sexual intercourse with ~~[a child]~~ an individual who is ~~[under the age of 14.]~~ younger than 14 years old.

(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

~~[(2) Rape of a child]~~ (3) A violation of Subsection (2) is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsections ~~[(2)]~~ (3)(b) and ~~[(4)]~~ (5), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to ~~[another]~~ the victim; or

(ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.

~~[(3)]~~ (4) Subsection ~~[(2)]~~ (3)(b) does not apply if the defendant was younger than 18 years ~~[of age]~~ old at the time of the offense.

~~[(4)]~~ (5) (a) When imposing a sentence under ~~[Subsection (2)]~~ Subsections (3)(a) and ~~[(4)]~~ (5)(b), a court may impose a term of imprisonment under Subsection ~~[(4)]~~ (5)(b) if:

(i) it is a first time offense for the defendant under this section;
 (ii) the defendant was younger than 21 years ~~[of age]~~ old at the time of the offense; and
 (iii) the court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection ~~[(4)]~~ (5)(a) are met, the court may impose a term of imprisonment of not less than:

- (i) 15 years and which may be for life;
- (ii) 10 years and which may be for life; or
- (iii) six years and which may be for life.

~~[(5)]~~ (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 83. Section ~~76-5-402.2~~ is amended to read:

76-5-402.2. Object rape -- Penalties.

~~[(1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which]~~

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits object rape if:

(a) the actor:

(i) acts without an individual's consent;

(ii) causes the penetration, however slight, of the genital or anal opening of the individual by:

(A) a foreign object;

(B) a substance;

(C) an instrument;

(D) a device; or

(E) a part of the human body other than the mouth or genitals; and

(iii) (A) intends to cause substantial emotional or bodily pain to the individual; or

3719 (B) intends to arouse or gratify the sexual desire of any other individual; and
3720 (b) the individual described in Subsection (2)(a)(i) is 14 years old or older.
3721 (3) A violation of Subsection (2) is a first degree felony, punishable by a term of
3722 imprisonment of:
3723 (a) except as provided in Subsection ~~[(1)]~~ (3)(b) or (c), not less than five years and
3724 which may be for life;
3725 (b) except as provided in Subsection ~~[(1)]~~ (3)(c) or ~~[(2)]~~ (4), 15 years and which may
3726 be for life, if the trier of fact finds that:
3727 (i) during the course of the commission of the object rape the defendant caused serious
3728 bodily injury to ~~[another]~~ the victim; or
3729 (ii) at the time of the commission of the object rape, the defendant was younger than 18
3730 years ~~[of age]~~ old and was previously convicted of a grievous sexual offense; or
3731 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3732 object rape, the defendant was previously convicted of a grievous sexual offense.
3733 ~~[(2)]~~ (4) If, when imposing a sentence under Subsection ~~[(1)]~~ (3)(b), a court finds that a
3734 lesser term than the term described in Subsection ~~[(1)]~~ (3)(b) is in the interests of justice and
3735 states the reasons for this finding on the record, the court may impose a term of imprisonment
3736 of not less than:
3737 (a) 10 years and which may be for life; or
3738 (b) six years and which may be for life.
3739 ~~[(3)]~~ (5) The provisions of Subsection ~~[(2)]~~ (4) do not apply ~~[when a person]~~ if a
3740 defendant is sentenced under Subsection ~~[(1)]~~ (3)(a) or (c).
3741 ~~[(4)]~~ (6) Imprisonment under Subsection ~~[(1)(b), (1)(c), or (2)]~~ (3)(b), (3)(c), or (4) is
3742 mandatory in accordance with Section 76-3-406.
3743 Section 84. Section **76-5-402.3** is amended to read:
3744 **76-5-402.3. Object rape of a child -- Penalty.**
3745 (1) Terms defined in Section 76-1-101.5 apply to this section.
3746 ~~[(1) A person]~~ (2) (a) An actor commits object rape of a child ~~[when the person]~~ if:
3747 (i) the actor causes the penetration or touching, however slight, of the genital or anal
3748 opening ~~[of a child who is under the age of 14 by any]~~ of the individual by, except as provided
3749 in Subsection (2)(b):

3750 (A) a foreign object[;];
 3751 (B) a substance[;];
 3752 (C) an instrument[;]; or
 3753 (D) a device[, not including a part of the human body, with intent];
 3754 (ii) the actor:
 3755 (A) intends to cause substantial emotional or bodily pain to the [child] individual; or
 3756 [with the intent]
 3757 (B) intends to arouse or gratify the sexual desire of any [person:] individual; and
 3758 (iii) the individual described in Subsection (2)(a)(i) is younger than 14 years old.
 3759 (b) Subsection (2)(a) does not include penetration or touching by a part of the human
 3760 body.
 3761 ~~[(2) Object rape of a child]~~ (3) (a) A violation of Subsection (2) is a first degree felony
 3762 punishable by a term of imprisonment of:
 3763 ~~[(a)]~~ (i) except as provided in Subsections ~~[(2)(b)]~~ (3)(a)(ii) and (4), not less than 25
 3764 years and which may be for life; or
 3765 ~~[(b)]~~ (ii) life without parole, if the trier of fact finds that:
 3766 ~~[(i)]~~ (A) during the course of the commission of the object rape of a child the defendant
 3767 caused serious bodily injury to [another] the victim; or
 3768 ~~[(ii)]~~ (B) at the time of the commission of the object rape of a child the defendant was
 3769 previously convicted of a grievous sexual offense.
 3770 ~~[(3)]~~ (b) Subsection ~~[(2)(b)]~~ (3)(a)(ii) does not apply if the defendant was younger than
 3771 18 years [of age] old at the time of the offense.
 3772 (4) (a) When imposing a sentence under [Subsection (2)(a)] Subsections (3)(a)(i) and
 3773 (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:
 3774 (i) it is a first time offense for the defendant under this section;
 3775 (ii) the defendant was younger than 21 years [of age] old at the time of the offense; and
 3776 (iii) the court finds that a lesser term than the term described in Subsection ~~[(2)(a)]~~
 3777 (3)(a)(i) is in the interests of justice under the facts and circumstances of the case, including the
 3778 age of the victim, and states the reasons for this finding on the record.
 3779 (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of
 3780 imprisonment of not less than:

- (i) 15 years and which may be for life;
- (ii) 10 years and which may be for life; or
- (iii) six years and which may be for life.

(5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 85. Section ~~76-5-403~~ is amended to read:

76-5-403. Forcible sodomy -- Penalties.

(1) (a) As used in this section, "sodomy" means engaging in any sexual act with an individual who is 14 years ~~[of age]~~ old or older involving the genitals of one individual and the mouth or anus of another individual~~[, regardless of the sex of either participant]~~.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An ~~[individual]~~ actor commits forcible sodomy when the actor commits sodomy upon another individual without the ~~[other's]~~ other individual's consent.

(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) ~~[Forcible sodomy]~~ A violation of Subsection (2) is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to ~~[another]~~ the victim; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years ~~[of age]~~ old and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life; or

3812 (b) six years and which may be for life.

3813 (5) The provisions of Subsection (4) do not apply when ~~[an individual]~~ a defendant is
3814 sentenced under Subsection (3)(a) or (c).

3815 (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance
3816 with Section 76-3-406.

3817 Section 86. Section ~~76-5-403.1~~ is amended to read:

3818 **76-5-403.1. Sodomy on a child -- Penalties.**

3819 (1) Terms defined in Section 76-1-101.5 apply to this section.

3820 ~~[(1) A person]~~ (2) (a) An actor commits sodomy ~~[upon]~~ on a child if:

3821 (i) the actor engages in any sexual act upon or with ~~[a child who is under the age of 14,~~
3822 ~~involving]~~ another individual;

3823 (ii) the individual is younger than 14 years old; and

3824 (iii) the sexual act involves the genitals or anus of the actor or the ~~[child]~~ individual
3825 and the mouth or anus of either ~~[person, regardless of the sex of either participant.]~~ the actor or
3826 individual.

3827 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
3828 relevant element of a violation of Subsection (2)(a)(i).

3829 ~~[(2) Sodomy upon a child]~~ (3) A violation of Subsection (2)(a) is a first degree felony
3830 punishable by a term of imprisonment of:

3831 (a) except as provided in Subsections ~~[(2)]~~ (3)(b) and ~~[(4)]~~ (5), not less than 25 years
3832 and which may be for life; or

3833 (b) life without parole, if the trier of fact finds that:

3834 (i) during the course of the commission of the sodomy ~~[upon]~~ on a child the defendant
3835 caused serious bodily injury to ~~[another]~~ the victim; or

3836 (ii) at the time of the commission of the sodomy ~~[upon]~~ on a child, the defendant was
3837 previously convicted of a grievous sexual offense.

3838 ~~[(3)]~~ (4) Subsection ~~[(2)]~~ (3)(b) does not apply if the defendant was younger than 18
3839 years ~~[of age]~~ old at the time of the offense.

3840 ~~[(4)]~~ (5) (a) When imposing a sentence under ~~[Subsection (2)]~~ Subsections (3)(a) and
3841 ~~[(4)]~~ (5)(b), a court may impose a term of imprisonment under Subsection ~~[(4)]~~ (5)(b) if:

3842 (i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years ~~[of age]~~ old at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection ~~[(4)]~~ (5)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

(ii) 10 years and which may be for life; or

(iii) six years and which may be for life.

~~[(5)]~~ (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 87. Section ~~76-5-404~~ is amended to read:

76-5-404. Forcible sexual abuse -- Penalties -- Limitations.

(1) (a) As used in this section, "indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) An individual]~~ (2) (a) Except as provided in Subsection (4), an actor commits forcible sexual abuse if [the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, forcible sodomy, or attempted rape or forcible sodomy,];

(i) the actor;

(A) touches the anus, buttocks, pubic area, or any part of the genitals of [another, or] another individual;

(B) touches the breast of [a] another individual who is female[;]; or

(C) otherwise takes indecent liberties with [another, with intent to] another individual;

(ii) the actor intends, without the consent of the individual, to:

(A) cause substantial emotional or bodily pain to any individual [or with the intent to];

or

(B) arouse or gratify the sexual desire of any individual[; without the consent of the other, regardless of the sex of any participant.]; and

~~[(2) Forcible sexual abuse is:]~~

~~[(a) except as provided in Subsection (2)(b).]~~

3874 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
 3875 older.

3876 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
 3877 relevant element of a violation of Subsection (2)(a).

3878 (3) (a) A violation of Subsection (2) is a felony of the second degree, punishable by a
 3879 term of imprisonment of not less than one year nor more than 15 years~~;~~
 3880 ~~or (b) except as provided in Subsection (3);~~].

3881 (b) (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection
 3882 (3)(b)(ii), a violation of Subsection (2) is a felony of the first degree, punishable by a term of
 3883 imprisonment for 15 years and which may be for life, if the trier of fact finds that during the
 3884 course of the commission of the forcible sexual abuse the defendant caused serious bodily
 3885 injury to [another] the victim.

3886 ~~[(3)]~~ (ii) If, when imposing a sentence under Subsection ~~[(2)(b)]~~ (3)(b)(i), a court finds
 3887 that a lesser term than the term described in Subsection ~~[(2)(b)]~~ (3)(b)(i) is in the interests of
 3888 justice and states the reasons for this finding on the record, the court may impose a term of
 3889 imprisonment of not less than:

3890 ~~[(a)]~~ (A) 10 years and which may be for life; or

3891 ~~[(b)]~~ (B) six years and which may be for life.

3892 (4) If the conduct of the actor described in Subsection (2)(a) amounts to a violation
 3893 under one or more of the following, or an attempt to violate one or more of the following, the
 3894 actor shall be charged with the violation and not under Subsection (2)(a):

3895 (a) rape, in violation of Section 76-5-402;

3896 (b) object rape, in violation of Section 76-5-402.2; or

3897 (c) forcible sodomy, in violation of Section 76-5-403.

3898 ~~[(4)]~~ (5) Imprisonment under Subsection ~~[(2)]~~ (3)(b) or ~~[(3)]~~ (4) is mandatory in
 3899 accordance with Section 76-3-406.

3900 Section 88. Section **76-5-404.1** is amended to read:

3901 **76-5-404.1. Sexual abuse of a child -- Penalties -- Limitations.**

3902 (1) (a) As used in this section:

3903 ~~[(a)]~~ (i) "Adult" means an individual 18 years ~~[of age]~~ old or older.

3904 ~~[(b)]~~ (ii) "Child" means an individual ~~[under the age of 14;]~~ younger than 14 years old.

(iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

~~[(c)]~~ (iv) "Position of special trust" means:

~~[(i)]~~ (A) an adoptive parent;

~~[(ii)]~~ (B) an athletic manager who is an adult;

~~[(iii)]~~ (C) an aunt;

~~[(iv)]~~ (D) a babysitter;

~~[(v)]~~ (E) a coach;

~~[(vi)]~~ (F) a cohabitant of a parent if the cohabitant is an adult;

~~[(vii)]~~ (G) a counselor;

~~[(viii)]~~ (H) a doctor or physician;

~~[(ix)]~~ (I) an employer;

~~[(x)]~~ (J) a foster parent;

~~[(xi)]~~ (K) a grandparent;

~~[(xii)]~~ (L) a legal guardian;

~~[(xiii)]~~ (M) a natural parent;

~~[(xiv)]~~ (N) a recreational leader who is an adult;

~~[(xv)]~~ (O) a religious leader;

~~[(xvi)]~~ (P) a sibling or a stepsibling who is an adult;

~~[(xvii)]~~ (Q) a scout leader who is an adult;

~~[(xviii)]~~ (R) a stepparent;

~~[(xix)]~~ (S) a teacher or any other individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years ~~[of age]~~ old or older;

~~[(xx)]~~ (T) an instructor, professor, or teaching assistant at a public or private institution of higher education;

~~[(xxi)]~~ (U) an uncle;

~~[(xxii)]~~ (V) a youth leader who is an adult; or

~~[(xxiii)]~~ (W) any individual in a position of authority, other than those individuals listed in Subsections ~~[(1)(c)(i) through (xxiii)]~~ (1)(a)(iv)(A) through (W), which enables the individual to exercise undue influence over the child.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~[(2) An individual]~~ (2) (a) Except as provided in Subsection (4), an actor commits

3936 sexual abuse of a child if~~[, under circumstances not amounting to rape of a child, object rape of~~
3937 ~~a child, sodomy on a child, or an attempt to commit any of these offenses,]~~ the actor:

3938 (i) (A) touches the anus, buttocks, pubic area, or genitalia of any child[;];

3939 (B) touches the breast of a female child[;]; or [otherwise]

3940 (C) takes indecent liberties with a child[~~, with intent to~~]; and

3941 (ii) the actor's conduct is with intent to:

3942 (A) cause substantial emotional or bodily pain to any individual; or [with the intent]

3943 (B) to arouse or gratify the sexual desire of any individual [regardless of the sex of any
3944 participant].

3945 ~~[(3) Sexual abuse of a child is a second degree felony.]~~

3946 ~~[(4) An individual commits aggravated sexual abuse of a child when in conjunction~~
3947 ~~with the offense described in Subsection (2) any of the following circumstances have been~~
3948 ~~charged and admitted or found true in the action for the offense:]~~

3949 ~~[(a) the offense was committed by the use of a dangerous weapon as defined in Section~~
3950 ~~76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or~~
3951 ~~was committed during the course of a kidnapping;]~~

3952 ~~[(b) the accused caused bodily injury or severe psychological injury to the victim~~
3953 ~~during or as a result of the offense;]~~

3954 ~~[(c) the accused was a stranger to the victim or made friends with the victim for the~~
3955 ~~purpose of committing the offense;]~~

3956 ~~[(d) the accused used, showed, or displayed pornography or caused the victim to be~~
3957 ~~photographed in a lewd condition during the course of the offense;]~~

3958 ~~[(e) the accused, prior to sentencing for this offense, was previously convicted of any~~
3959 ~~sexual offense;]~~

3960 ~~[(f) the accused committed the same or similar sexual act upon two or more victims at~~
3961 ~~the same time or during the same course of conduct;]~~

3962 ~~[(g) the accused committed, in Utah or elsewhere, more than five separate acts, which~~
3963 ~~if committed in Utah would constitute an offense described in this chapter, and were~~
3964 ~~committed at the same time, or during the same course of conduct, or before or after the instant~~
3965 ~~offense;]~~

3966 ~~[(h) the offense was committed by an individual who occupied a position of special~~

3967 trust in relation to the victim;]

3968 ~~[(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or~~
3969 ~~sexual acts by the victim with any other individual, or sexual performance by the victim before~~
3970 ~~any other individual, human trafficking, or human smuggling; or]~~

3971 ~~[(j) the accused caused the penetration, however slight, of the genital or anal opening~~
3972 ~~of the child by any part or parts of the human body other than the genitals or mouth.]~~

3973 ~~[(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of~~
3974 ~~imprisonment of:]~~

3975 ~~[(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and~~
3976 ~~which may be for life;]~~

3977 ~~[(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of~~
3978 ~~fact finds that during the course of the commission of the aggravated sexual abuse of a child~~
3979 ~~the defendant caused serious bodily injury to another; or]~~

3980 ~~[(c) life without parole, if the trier of fact finds that at the time of the commission of~~
3981 ~~the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous~~
3982 ~~sexual offense.]~~

3983 ~~[(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a~~
3984 ~~lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and~~
3985 ~~states the reasons for this finding on the record, the court may impose a term of imprisonment~~
3986 ~~of not less than:]~~

3987 ~~[(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or]~~

3988 ~~[(b) for purposes of Subsection (5)(a) or (b):]~~

3989 ~~[(i) 10 years and which may be for life; or]~~

3990 ~~[(ii) six years and which may be for life.]~~

3991 ~~[(7) The provisions of Subsection (6) do not apply when an individual is sentenced~~
3992 ~~under Subsection (5)(c).]~~

3993 ~~[(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18~~
3994 ~~years of age at the time of the offense.]~~

3995 ~~[(9) Imprisonment under this section is mandatory in accordance with Section~~
3996 ~~76-3-406.]~~

3997 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the

3998 relevant element of a violation of Subsection (2)(a).

3999 (3) A violation of Subsection (2) is a second degree felony.

4000 (4) If the conduct of the actor described in Subsection (2)(a) amounts to a violation
4001 under one or more of the following, or an attempt to violate one or more of the following, the
4002 actor shall be charged with the violation and not under Subsection (2)(a):

4003 (a) rape of a child, in violation of Section 76-5-402.1;

4004 (b) object rape of a child, in violation of Section 76-5-402.3; or

4005 (c) sodomy on a child, in violation of Section 76-5-403.1.

4006 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

4007 Section 89. Section **76-5-404.3** is enacted to read:

4008 **76-5-404.3. Aggravated sexual abuse of a child -- Penalties.**

4009 (1) (a) As used in this section:

4010 (i) "Adult" means the same as that term is defined in Section 76-4-404.1.

4011 (ii) "Child" means the same as that term is defined in Section 76-4-404.1.

4012 (iii) "Position of special trust" means the same as that term is defined in Section
4013 76-4-404.1.

4014 (b) Terms defined in Section 76-1-101.5 apply to this section.

4015 (2) (a) An actor commits aggravated sexual abuse of a child if, in conjunction with the
4016 offense described in Subsection 76-4-404.1(2)(a), any of the following circumstances have
4017 been charged and admitted or found true in the action for the offense:

4018 (i) the actor committed the offense:

4019 (A) by the use of a dangerous weapon;

4020 (B) by force, duress, violence, intimidation, coercion, menace, or threat of harm; or

4021 (C) during the course of a kidnaping;

4022 (ii) the actor caused bodily injury or severe psychological injury to the child during or
4023 as a result of the offense;

4024 (iii) the actor was a stranger to the child or made friends with the child for the purpose
4025 of committing the offense;

4026 (iv) the actor used, showed, or displayed pornography or caused the child to be
4027 photographed in a lewd condition during the course of the offense;

4028 (v) the actor, prior to sentencing for this offense, was previously convicted of any

4029 sexual offense;

4030 (vi) the actor committed the same or similar sexual act upon two or more children at
4031 the same time or during the same course of conduct;

4032 (vii) the actor committed, in Utah or elsewhere, more than five separate acts, which if
4033 committed in Utah would constitute an offense described in this chapter, and were committed
4034 at the same time, or during the same course of conduct, or before or after the instant offense;

4035 (viii) the actor occupied a position of special trust in relation to the child;

4036 (ix) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
4037 sexual acts by the child with any other individual, or sexual performance by the child prior to
4038 any other individual, human trafficking, or human smuggling; or

4039 (x) the actor caused the penetration, however slight, of the genital or anal opening of
4040 the child by any part or parts of the human body other than the genitals or mouth.

4041 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
4042 relevant element of a violation of Subsection (2)(a).

4043 (3) Except as provided in Subsection (6), a violation of Subsection (2) is a first degree
4044 felony punishable by a term of imprisonment of:

4045 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and
4046 which may be for life;

4047 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact
4048 finds that during the course of the commission of the aggravated sexual abuse of a child the
4049 defendant caused serious bodily injury to another; or

4050 (c) life without parole, if the trier of fact finds that at the time of the commission of the
4051 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
4052 sexual offense.

4053 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a
4054 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and
4055 states the reasons for this finding on the record, the court may impose a term of imprisonment
4056 of not less than:

4057 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

4058 (b) for purposes of Subsection (3)(a) or (b):

4059 (i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply if a defendant is sentenced under Subsection (3)(c).

(6) Subsection (3)(b) or (3)(c) does not apply if the defendant was younger than 18 years old at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406. Section 90. Section 76-5-405 is amended to read:

76-5-405. Aggravated sexual assault -- Penalty.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person]~~ (2) An actor commits aggravated sexual assault if:

(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:

(i) uses, or threatens ~~[the victim]~~ another individual with the use of, a dangerous weapon ~~[as defined in Section 76-1-601];~~

(ii) compels, or attempts to compel, ~~[the victim]~~ another individual to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any ~~[person]~~ individual; or

(iii) is aided or abetted by one or more persons;

(b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:

(i) causes serious bodily injury to any ~~[person]~~ individual;

(ii) uses, or threatens ~~[the victim]~~ the injured individual with the use of~~;~~ a dangerous weapon ~~[as defined in Section 76-1-601];~~

(iii) attempts to compel ~~[the victim]~~ the injured individual to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any ~~[person]~~ individual; or

(iv) is aided or abetted by one or more persons; or

(c) in the course of an attempted forcible sexual abuse, the actor:

(i) causes serious bodily injury to any ~~[person]~~ individual;

(ii) uses, or threatens the ~~[victim]~~ injured individual with the use of~~;~~ a dangerous weapon ~~[as defined in Section 76-1-601];~~

(iii) attempts to compel the [victim] injured individual to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any [person] individual; or

(iv) is aided or abetted by one or more persons.

~~[(2) Aggravated sexual assault]~~ (3) A violation of Subsection (2) is a first degree felony, punishable by a term of imprisonment of:

(a) for an aggravated sexual assault described in Subsection ~~[(1)]~~ (2)(a):

(i) except as provided in Subsection ~~[(2)]~~ (3)(a)(ii) or ~~[(3)]~~ (4)(a), not less than 15 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

(b) for an aggravated sexual assault described in Subsection ~~[(1)]~~ (2)(b):

(i) except as provided in Subsection ~~[(2)]~~ (3)(b)(ii) or ~~[(4)]~~ (5)(a), not less than 10 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or

(c) for an aggravated sexual assault described in Subsection ~~[(1)]~~ (2)(c):

(i) except as provided in Subsection ~~[(2)]~~ (3)(c)(ii) or ~~[(5)]~~ (6)(a), not less than six years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

~~[(3)]~~ (4) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(a)(i), a court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(b) The provisions of Subsection ~~[(3)]~~ (4)(a) do not apply when a [person] defendant is sentenced under Subsection ~~[(2)]~~ (3)(a)(ii).

~~[(4)]~~ (5) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(b)(i), a court finds

that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(b)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

(b) The provisions of Subsection ~~[(4)]~~ (5)(a) do not apply when a ~~[person]~~ defendant is sentenced under Subsection ~~[(2)]~~ (3)(b)(ii).

~~[(5)]~~ (6) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(c)(i), a court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.

(b) The provisions of Subsection ~~[(5)]~~ (6)(a) do not apply when a ~~[person]~~ defendant is sentenced under Subsection ~~[(2)]~~ (3)(c)(ii).

~~[(6)]~~ (7) Subsections ~~[(2)]~~ (3)(a)(ii), ~~[(2)]~~ (3)(b)(ii), and ~~[(2)]~~ (3)(c)(ii) do not apply if the defendant was younger than 18 years ~~[of age]~~ old at the time of the offense.

~~[(7)]~~ (8) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 91. Section **76-5-406.3** is amended to read:

76-5-406.3. Applicability of sentencing provisions.

A person convicted of a violation of Section 76-5-301.1, child kidnaping; Section 76-5-302, aggravated kidnaping; Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; Section ~~[76-5-404.1]~~ 76-5-404.3, aggravated sexual abuse of a child; or Section 76-5-405, aggravated sexual assault shall be sentenced as follows:

(1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in accordance with the statutory provisions in effect prior to that date.

(2) If the person commits the crime and is sentenced on or after April 29, 1996, he shall be punished in accordance with the statutory provisions in effect after April 29, 1996.

(3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after April 29, 1996, he shall be given the option prior to sentencing to proceed either under the law which was in effect at the time the offense was committed or the law which was in effect at the time of sentencing. If the person refuses to select, the court shall sentence the person in accordance with the law in effect at the time of sentencing. The provisions of Subsections

77-27-9(2)(a) and (b) apply to the sentence of any person who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

Section 92. Section ~~76-5-406.5~~ is amended to read:

76-5-406.5. Circumstances required for probation or suspension of sentence for certain sex offenses against a child.

(1) In a case involving a conviction for a violation of Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; or any attempt to commit a felony under those sections or a conviction for a violation of [~~Subsections 76-5-404.1(4) and (5)~~] Section 76-5-404.3, aggravated sexual abuse of a child, the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:

(a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;

(b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;

(c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;

(d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;

(e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;

(f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;

(g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child

4184 victim before any other person;

4185 (h) the defendant admits the offense of which he has been convicted and has been
4186 accepted for mental health treatment in a residential sexual abuse treatment center that has been
4187 approved by the Department of Corrections under Subsection (3);

4188 (i) rehabilitation of the defendant through treatment is probable, based upon evidence
4189 provided by a treatment professional who has been approved by the Department of Corrections
4190 under Subsection (3) and who has accepted the defendant for treatment;

4191 (j) prior to being sentenced, the defendant has undergone a complete psychological
4192 evaluation conducted by a professional approved by the Department of Corrections and:

4193 (i) the professional's opinion is that the defendant is not an exclusive pedophile and
4194 does not present an immediate and present danger to the community if released on probation
4195 and placed in a residential sexual abuse treatment center; and

4196 (ii) the court accepts the opinion of the professional;

4197 (k) if the offense is committed by a parent, stepparent, adoptive parent, or legal
4198 guardian of the child victim, the defendant shall, in addition to establishing all other conditions
4199 of this section, establish it is in the child victim's best interest that the defendant not be
4200 imprisoned, by presenting evidence provided by a treatment professional who:

4201 (i) is treating the child victim and understands he will be treating the family as a whole;
4202 or

4203 (ii) has assessed the child victim for purposes of treatment as ordered by the court
4204 based on a showing of good cause; and

4205 (l) if probation is imposed, the defendant, as a condition of probation, may not reside in
4206 a home where children younger than 18 years [~~of age~~] old reside for at least one year beginning
4207 with the commencement of treatment, and may not again take up residency in a home where
4208 children younger than 18 years [~~of age~~] old reside during the period of probation until allowed
4209 to do so by order of the court.

4210 (2) A term of incarceration of at least 90 days is to be served prior to treatment and
4211 continue until the time when bed space is available at a residential sexual abuse treatment
4212 center as provided under Subsection (3) and probation is to be imposed for up to a maximum of
4213 10 years.

4214 (3) (a) The Department of Corrections shall develop qualification criteria for the

approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.

(b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.

(4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:

(a) the nature, frequency, and duration of the conduct;

(b) the effects of the conduct on any child victim involved;

(c) the best interest of the public and any child victim; and

(d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.

(5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.

(6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.

(7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.

(8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

Section 93. Section **76-5-407** is amended to read:

76-5-407. Consensual conduct in marriage.

~~[(1)]~~ The provisions of this part do not apply to consensual conduct between individuals married to each other.

4246 ~~[(2) In any prosecution for:]~~
4247 ~~[(a) the following offenses, any sexual penetration, however slight, is sufficient to~~
4248 ~~constitute the relevant element of the offense:]~~
4249 ~~[(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving~~
4250 ~~sexual intercourse;]~~
4251 ~~[(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section~~
4252 ~~76-5-401.2, involving sexual intercourse, or]~~
4253 ~~[(iii) rape, a violation of Section 76-5-402, or]~~
4254 ~~[(b) the following offenses, any touching, however slight, is sufficient to constitute the~~
4255 ~~relevant element of the offense:]~~
4256 ~~[(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving~~
4257 ~~acts of sodomy;]~~
4258 ~~[(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section~~
4259 ~~76-5-401.2, involving acts of sodomy;]~~
4260 ~~[(iii) forcible sodomy, a violation of Subsection 76-5-403(2);]~~
4261 ~~[(iv) rape of a child, a violation of Section 76-5-402.1; or]~~
4262 ~~[(v) object rape of a child, a violation of Section 76-5-402.3.]~~
4263 ~~[(3) In any prosecution for the following offenses, any touching, even if accomplished~~
4264 ~~through clothing, is sufficient to constitute the relevant element of the offense:]~~
4265 ~~[(a) sodomy on a child, a violation of Section 76-5-403.1;]~~
4266 ~~[(b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section~~
4267 ~~76-5-404.1;]~~
4268 ~~[(c) sexual abuse of a minor, a violation of Section 76-5-401.1;]~~
4269 ~~[(d) unlawful sexual conduct with a 16- or 17-year-old, a violation of Section~~
4270 ~~76-5-401.2;]~~
4271 ~~[(e) forcible sexual abuse, a violation of Section 76-5-404;]~~
4272 ~~[(f) custodial sexual relations, a violation of Section 76-5-412; or]~~
4273 ~~[(g) custodial sexual relations or misconduct with youth receiving state services, a~~
4274 ~~violation of Section 76-5-413.]~~
4275 Section 94. Section **76-5-412** is amended to read:
4276 **76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.**

4277 (1) (a) As used in this section:

4278 ~~[(a)]~~ (i) "Actor" means:

4279 (A) a law enforcement officer, as defined in Section 53-13-103;

4280 ~~[(i)]~~ (B) a correctional officer, as defined in Section 53-13-104;

4281 ~~[(ii)]~~ (C) a special function officer, as defined in Section 53-13-105; or

4282 ~~[(iii)]~~ a law enforcement officer, as defined in Section 53-13-103; or

4283 ~~[(iv)]~~ (D) an employee of, or private provider or contractor for, the Department of

4284 Corrections or a county jail.

4285 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

4286 ~~[(b)]~~ (iii) "Person in custody" means an individual, either an adult 18 years ~~[of age]~~ old

4287 or older, or a minor younger than 18 years ~~[of age]~~ old, who is:

4288 ~~[(i)]~~ (A) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in

4289 the custody of the Department of Corrections created under Section 64-13-2, but who is being

4290 housed at the Utah State Hospital established under Section 62A-15-601 or other medical

4291 facility;

4292 ~~[(ii)]~~ (B) under correctional supervision, such as at a work release facility or as a

4293 parolee or probationer; or

4294 ~~[(iii)]~~ (C) under lawful or unlawful arrest, either with or without a warrant.

4295 ~~[(c)]~~ (iv) "Private provider or contractor" means ~~[any person or entity]~~ a person that

4296 contracts with the Department of Corrections or with a county jail to provide services or

4297 functions that are part of the operation of the Department of Corrections or a county jail under

4298 state or local law.

4299 (b) Terms defined in Section 76-1-101.5 apply to this section.

4300 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts

4301 under Subsection ~~[(3)]~~ (2)(b):

4302 (i) under circumstances not amounting to commission of, or an attempt to commit, an

4303 offense under Subsection ~~[(6)]~~ (4); and

4304 (ii) (A) the actor knows that the injured individual is a person in custody; or

4305 (B) a reasonable person in the actor's position should have known under the

4306 circumstances that the injured individual was a person in custody.

4307 (b) Acts referred to in Subsection (2)(a) are:

4308 (i) having sexual intercourse with a person in custody;
 4309 (ii) engaging in a sexual act with a person in custody involving the genitals of one
 4310 individual and the mouth or anus of another individual; or
 4311 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
 4312 person in custody by any foreign object, substance, instrument, or device, including a part of
 4313 the human body; and
 4314 (B) intending to cause substantial emotional or bodily pain to any individual.
 4315 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
 4316 relevant element of a violation of Subsection (2)(a).
 4317 ~~[(b)] (3)(a)~~ A violation of Subsection (2)~~[(a)]~~ is a third degree felony~~[-but if]~~.
 4318 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18
 4319 years [of age] old, a violation of Subsection (2)~~[(a)]~~ is a second degree felony.
 4320 (c) If the act committed under [this] Subsection ~~[(2)]~~ (3) amounts to an offense subject
 4321 to a greater penalty under another provision of state law than is provided under this Subsection
 4322 ~~[(2)]~~ (3), this Subsection ~~[(2)]~~ (3) does not prohibit prosecution and sentencing for the more
 4323 serious offense.
 4324 ~~[(3) Acts referred to in Subsection (2)(a) are:]~~
 4325 ~~[(a) having sexual intercourse with a person in custody;]~~
 4326 ~~[(b) engaging in any sexual act with a person in custody involving the genitals of one~~
 4327 ~~individual and the mouth or anus of another individual, regardless of the sex of either~~
 4328 ~~participant; or]~~
 4329 ~~[(c) causing the penetration, however slight, of the genital or anal opening of a person~~
 4330 ~~in custody by any foreign object, substance, instrument, or device, including a part of the~~
 4331 ~~human body, with the intent to cause substantial emotional or bodily pain to any individual,~~
 4332 ~~regardless of the sex of any participant.]~~
 4333 ~~[(4)(a) An actor commits custodial sexual misconduct if the actor commits any of the~~
 4334 ~~acts under Subsection (5):]~~
 4335 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~
 4336 ~~offense under Subsection (6); and]~~
 4337 ~~[(ii) (A) the actor knows that the individual is a person in custody; or]~~
 4338 ~~[(B) a reasonable person in the actor's position should have known under the~~

circumstances that the individual was a person in custody.]

~~[(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third-degree felony.]~~

~~[(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.]~~

~~[(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:]~~

~~[(a) touching the anus, buttocks, pubic area, or any part of the genitals of a person in custody;]~~

~~[(b) touching the breast of a female person in custody; or]~~

~~[(c) otherwise taking indecent liberties with a person in custody.]~~

~~[(6)]~~ (4) The offenses referred to in ~~[Subsections]~~ Subsection (2)(a)(i) and ~~[(4)(a)(i)]~~ Subsection 76-5-412.2(2)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

~~[(7)]~~ (5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) ~~[or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses,]~~ if the person in custody is younger than 18 years ~~[of age]~~ old, that the actor:

(i) mistakenly believed the person in custody to be 18 years ~~[of age]~~ old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) ~~[or (4)]~~.

~~[(8)]~~ (6) It is a defense that the commission by the actor of an act under Subsection (2) ~~[or (4)]~~ is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 95. Section **76-5-412.2** is enacted to read:

76-5-412.2. Custodial sexual misconduct -- Penalties -- Defenses.

(1) (a) As used in this section:

(i) "Actor" means the same as that term is defined in Section 76-5-412.

(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iii) "Person in custody" means the same as that term is defined in Section 76-5-412.

(iv) "Private provider or contractor" means the same as that term is defined in Section 76-5-412.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits custodial sexual misconduct if:

(i) the actor commits any of the acts under Subsection (2)(b) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection 76-5-412(4); and

(ii) (A) the actor knows that the injured individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the injured individual was a person in custody.

(b) Acts referred to in Subsection (2)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to another individual or with the intent to arouse or gratify the sexual desire of any individual:

(i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in custody;

(ii) touching the breast of a female person in custody; or

(iii) otherwise taking indecent liberties with a person in custody.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a third degree felony.

(c) If the act committed under Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

(4) (a) It is not a defense to the commission of, or attempt to commit, the offense described in Subsection (2) if the person in custody is younger than 18 years old, that the actor:

(i) mistakenly believed the person in custody to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).

(5) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 96. Section **76-5-413** is amended to read:

76-5-413. Custodial sexual relations with youth receiving state services --

Penalties -- Defenses and limitations.

(1) (a) As used in this section:

~~(a)~~ (i) "Actor" means:

~~(i)~~ (A) an individual employed by the Department of Human Services, as created in Section 62A-1-102, or an employee of a private provider or contractor; or

~~(ii)~~ (B) an individual employed by the juvenile court of the state, or an employee of a private provider or contractor.

~~(b)~~ (ii) "Department" means the Department of Human Services created in Section 62A-1-102.

(iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

~~(c)~~ (iv) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

~~(d)~~ (v) "Private provider or contractor" means ~~[any individual or entity]~~ a person that contracts with the:

~~(i)~~ (A) department to provide services or functions that are part of the operation of the

4432 department; or

4433 ~~[(ii)]~~ (B) juvenile court to provide services or functions that are part of the operation of

4434 the juvenile court.

4435 ~~[(e)]~~ (vi) "Youth receiving state services" means an individual:

4436 ~~[(i)]~~ (A) younger than 18 years old, except as provided under Subsection ~~[(1)(e)(ii)]~~

4437 (1)(a)(vi)(B), who is:

4438 ~~[(A)]~~ (I) in the custody of the department under Section 80-6-703; or

4439 ~~[(B)]~~ (II) receiving services from any division of the department if any portion of the

4440 costs of these services is covered by public money; or

4441 ~~[(ii)]~~ (B) younger than 21 years old:

4442 ~~[(A)]~~ (I) who is in the custody of the Division of Juvenile Justice Services, or the

4443 Division of Child and Family Services; or

4444 ~~[(B)]~~ (II) whose case is under the jurisdiction of the juvenile court.

4445 (b) Terms defined in Section 76-1-101.5 apply to this section.

4446 (2) (a) ~~[An]~~ Except as provided in Subsection (4), an actor commits custodial sexual

4447 relations with a youth receiving state services if:

4448 (i) the actor commits any of the acts ~~[under Subsection (3):]~~ described in Subsection

4449 (2)(b); and

4450 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~

4451 ~~offense under Subsection (6); and]~~

4452 (ii) (A) the actor knows that the injured individual is a youth receiving state services;

4453 or

4454 (B) a reasonable person in the actor's position should have known under the

4455 circumstances that the injured individual was a youth receiving state services.

4456 (b) Acts referred to in Subsection (2)(a)(i) are:

4457 (i) having sexual intercourse with a youth receiving state services;

4458 (ii) engaging in any sexual act with a youth receiving state services involving the

4459 genitals of one individual and the mouth or anus of another individual; or

4460 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a

4461 youth receiving state services by any foreign object, substance, instrument, or device, including

4462 a part of the human body; and

4463 (B) with the intent to cause substantial emotional or bodily pain to any individual,
4464 regardless of the sex of any participant, or with the intent to arouse or gratify the sexual desire
4465 of any individual.

4466 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
4467 relevant element of a violation of Subsection (2)(a).

4468 ~~[(b)]~~ (3) (a) A violation of Subsection (2)~~[(a)]~~ is a third degree felony~~[, but if]~~.

4469 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
4470 than 18 years old, a violation of Subsection (2)~~[(a)]~~ is a second degree felony.

4471 (c) If the act committed under ~~[this]~~ Subsection (2) amounts to an offense subject to a
4472 greater penalty under another provision of state law than is provided under this Subsection ~~[(2)]~~
4473 (3), this Subsection ~~[(2)]~~ (3) does not prohibit prosecution and sentencing for the more serious
4474 offense.

4475 ~~[(3) Acts referred to in Subsection (2)(a) are:]~~

4476 ~~[(a) having sexual intercourse with a youth receiving state services;]~~

4477 ~~[(b) engaging in any sexual act with a youth receiving state services involving the~~
4478 ~~genitals of one individual and the mouth or anus of another individual, regardless of the sex of~~
4479 ~~either participant; or]~~

4480 ~~[(c) causing the penetration, however slight, of the genital or anal opening of a youth~~
4481 ~~receiving state services by any foreign object, substance, instrument, or device, including a part~~
4482 ~~of the human body, with the intent to cause substantial emotional or bodily pain to any~~
4483 ~~individual, regardless of the sex of any participant or with the intent to arouse or gratify the~~
4484 ~~sexual desire of any individual, regardless of the sex of any participant.]~~

4485 ~~[(4) (a) An actor commits custodial sexual misconduct with a youth receiving state~~
4486 ~~services if the actor commits any of the acts under Subsection (5):]~~

4487 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~
4488 ~~offense under Subsection (6); and]~~

4489 ~~[(ii) (A) the actor knows that the individual is a youth receiving state services; or]~~

4490 ~~[(B) a reasonable person in the actor's position should have known under the~~
4491 ~~circumstances that the individual was a youth receiving state services.]~~

4492 ~~[(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth~~
4493 ~~receiving state services is younger than 18 years old, a violation of Subsection (4)(a) is a third~~

4494 ~~degree felony.]~~

4495 ~~[(c) If the act committed under this Subsection (4) amounts to an offense subject to a~~
 4496 ~~greater penalty under another provision of state law than is provided under this Subsection (4),~~
 4497 ~~this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.]~~

4498 ~~[(5) Acts referred to in Subsection (4)(a) are the following acts when committed with~~
 4499 ~~the intent to cause substantial emotional or bodily pain to any individual or with the intent to~~
 4500 ~~arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:]~~

4501 ~~[(a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth~~
 4502 ~~receiving state services;]~~

4503 ~~[(b) touching the breast of a female youth receiving state services; or]~~

4504 ~~[(c) otherwise taking indecent liberties with a youth receiving state services.]~~

4505 ~~[(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:]~~

4506 ~~[(a) Section 76-5-401, unlawful sexual activity with a minor;]~~

4507 ~~[(b) Section 76-5-402, rape;]~~

4508 ~~[(c) Section 76-5-402.1, rape of a child;]~~

4509 ~~[(d) Section 76-5-402.2, object rape;]~~

4510 ~~[(e) Section 76-5-402.3, object rape of a child;]~~

4511 ~~[(f) Section 76-5-403, forcible sodomy;]~~

4512 ~~[(g) Section 76-5-403.1, sodomy on a child;]~~

4513 ~~[(h) Section 76-5-404, forcible sexual abuse;]~~

4514 ~~[(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;~~

4515 ~~or]~~

4516 ~~[(j) Section 76-5-405, aggravated sexual assault.]~~

4517 (4) If the conduct of the actor amounts to a violation under one or more of the
 4518 following, or an attempt to violate one or more of the following, the actor shall be charged with
 4519 the violation and not under Subsection (2):

4520 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

4521 (b) rape, in violation of Section 76-5-402;

4522 (c) rape of a child, in violation of Section 76-5-402.1;

4523 (d) object rape, in violation of Section 76-5-402.2;

4524 (e) object rape of a child, in violation of Section 76-5-402.3;

(f) forcible sodomy, in violation of Section 76-5-403;

(g) sodomy on a child, in violation of Section 76-5-403.1;

(h) forcible sexual abuse, in violation of Section 76-5-404;

(i) sexual abuse of a child, in violation of Section 76-5-404.1;

(j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3; or

(k) aggravated sexual assault, in violation of Section 76-5-405.

~~[~~(7)~~]~~ (5) (a) It is not a defense to the commission of, ~~or an attempt to commit,~~ the offense ~~[of custodial sexual relations with a youth receiving state services under]~~ described in Subsection (2) ~~[or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses,]~~ if the youth receiving state services is younger than 18 years old, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) ~~[or (4)]~~.

~~[~~(8)~~]~~ (6) It is a defense that the commission by the actor of an act under Subsection (2) ~~[or (4)]~~ is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 97. Section **76-5-413.2** is enacted to read:

76-5-413.2. Custodial sexual misconduct with a youth receiving state services --

Penalties -- Defenses and limitations.

(1) (a) As used in this section:

(i) "Actor" means the same as that term is defined in Section 76-5-413.

(ii) "Department" means the same as that term is defined in Section 76-5-413.

(iii) "Juvenile court" means the same as that term is defined in Section 76-5-413.

(iv) "Private provider or contractor" means the same as that term is defined in Section 76-5-413.

(v) "Youth receiving state services" means the same as that term is defined in Section 76-5-413.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) Except as provided in Subsection (4), an actor commits custodial sexual

4556 misconduct with a youth receiving state services if:

4557 (i) the actor commits any of the acts described in Subsection (2)(b); and

4558 (ii) (A) the actor knows that the injured individual is a youth receiving state services;

4559 or

4560 (B) a reasonable person in the actor's position should have known under the

4561 circumstances that the injured individual was a youth receiving state services.

4562 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with

4563 the intent to cause substantial emotional or bodily pain to any individual or with the intent to

4564 arouse or gratify the sexual desire of any individual:

4565 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth

4566 receiving state services;

4567 (ii) touching the breast of a female youth receiving state services; or

4568 (iii) otherwise taking indecent liberties with a youth receiving state services.

4569 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the

4570 relevant element of a violation of Subsection (2)(a).

4571 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

4572 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger

4573 than 18 years old, a violation of Subsection (2) is a third degree felony.

4574 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater

4575 penalty under another provision of state law than is provided under this Subsection (3), this

4576 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

4577 (4) If the conduct of the actor amounts to a violation under one or more of the

4578 following, or an attempt to violate one or more of the following, the actor shall be charged with

4579 the violation and not under Subsection (2):

4580 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

4581 (b) rape, in violation of Section 76-5-402;

4582 (c) rape of a child, in violation of Section 76-5-402.1;

4583 (d) object rape, in violation of Section 76-5-402.2;

4584 (e) object rape of a child, in violation of Section 76-5-402.3;

4585 (f) forcible sodomy, in violation of Section 76-5-403;

4586 (g) sodomy on a child, in violation of Section 76-5-403.1;

(h) forcible sexual abuse, in violation of Section 76-5-404;

(i) sexual abuse of a child, in violation of Section 76-5-404.1;

(j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3; or

(k) aggravated sexual assault, in violation of Section 76-5-405.

(5) (a) It is not a defense to the commission of, or an attempt to commit, the offense described in Subsection (2) if the youth receiving state services is younger than 18 years old, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2).

(6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 98. Section **76-5-701** is amended to read:

76-5-701. Female genital mutilation definition.

(1) As used in this part, [~~female genital mutilation~~] "female genital mutilation" means any procedure that involves partial or total removal of the external female genitalia, or any harmful procedure to the female genitalia, including:

(a) clitoridectomy;

(b) the partial or total removal of the clitoris or the prepuce;

(c) excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(d) infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris;

(e) pricking, piercing, incising, or scraping, and cauterizing the genital area; or

(f) any other actions intended to alter the structure or function of the female genitalia for non-medical reasons.

(2) Female genital mutilation is considered a form of child abuse for mandatory reporting under Section 62A-4a-403.

Section 99. Section **76-5-702** is amended to read:

76-5-702. Prohibition on female genital mutilation -- Exceptions.

~~[(1) It is a second degree felony for any person to:]~~

(1) Terms defined in Sections 76-1-101.5 and 76-5-701 apply to this section.

(2) An actor commits female genital mutilation if the actor:

(a) ~~[perform]~~ performs a procedure described in Section 76-5-701 on a female under 18 years ~~[of age]~~ old;

(b) ~~[give]~~ gives permission for or ~~[permit]~~ permits a procedure described in Section 76-5-701 to be performed on a female under 18 years ~~[of age]~~ old; or

(c) ~~[remove or cause, permit, or facilitate]~~ removes, causes, permits, or facilitates the removal of a female under 18 years ~~[of age]~~ old from this state for the purpose of facilitating the performance of a procedure described in Section 76-5-701 on the female.

(3) A violation of Subsection (2) is a second degree felony.

~~[(2)]~~ (4) It is not a defense to ~~[female genital mutilation]~~ this section that the conduct described in Section 76-5-701 is required as a matter of religion, custom, ritual, or standard practice, or that the individual on whom it is performed or the individual's parent or guardian consented to the procedure.

~~[(3)]~~ (5) A surgical procedure is not a violation of ~~[Section 76-5-701]~~ this section if the procedure is performed by a physician licensed as a medical professional in the place it is performed and the procedure is:

(a) medically advisable;

(b) necessary to preserve or protect the physical health of the ~~[person]~~ individual on whom it is performed; or

(c) requested for sex reassignment surgery by the ~~[person]~~ individual on whom it is performed.

~~[(4) A]~~ (6) The license of any medical professional licensed in accordance with Title 58, Chapter 31b, Nurse Practice Act, Title 58, Chapter 67, Utah Medical Practice Act, Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or Title 58, Chapter 70a, Utah Physician Assistant Act, who is convicted of a violation of this section shall~~[have their license]~~ be permanently revoked by the appropriate licensing board.

Section 100. Section **76-5-704** is amended to read:

76-5-704. Civil cause of action.

(1) ~~[A victim of]~~ An individual upon whom female genital mutilation was performed may bring a civil action in any court of competent jurisdiction for female genital mutilation any time within 10 years of:

(a) the procedure being performed; or

(b) the victim's 18th birthday.

(2) The court may award actual, compensatory, and punitive damages, and any other appropriate relief.

(3) A prevailing plaintiff shall be awarded attorney fees and costs.

(4) Treble damages may be awarded if the plaintiff proves the defendant's acts were willful and malicious.

(5) If a health care provider is charged and prosecuted for a violation of Section 76-5-702, Section 78B-3-416 may not apply to an action against the health care provider under this section.

Section 101. Section **76-5b-103** is amended to read:

76-5b-103. Definitions.

As used in this chapter:

(1) "Child pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child pornography or vulnerable adult pornography with or without consideration.

(3) "Identifiable minor" means a person:

(a) (i) who was a minor at the time the visual depiction was created, adapted, or

4680 modified; or

4681 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
4682 depiction; and

4683 (b) who is recognizable as an actual person by the person's face, likeness, or other
4684 distinguishing characteristic, such as a birthmark, or other recognizable feature.

4685 (4) "Identifiable vulnerable adult" means a person:

4686 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,
4687 or modified; or

4688 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the
4689 visual depiction; and

4690 (b) who is recognizable as an actual person by the person's face, likeness, or other
4691 distinguishing characteristic, such as a birthmark, or other recognizable feature.

4692 (5) "Lacks capacity to consent" is as defined in [~~Subsection 76-5-111(1)~~] Section
4693 76-5-111.4.

4694 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
4695 performed by live actors in person.

4696 (7) "Minor" means a person younger than 18 years [~~of age~~] old.

4697 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
4698 genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is
4699 less than completely and opaquely covered.

4700 (9) "Produce" means:

4701 (a) the photographing, filming, taping, directing, producing, creating, designing, or
4702 composing of child pornography or vulnerable adult pornography; or

4703 (b) the securing or hiring of persons to engage in the photographing, filming, taping,
4704 directing, producing, creating, designing, or composing of child pornography or vulnerable
4705 adult pornography.

4706 (10) "Sexually explicit conduct" means actual or simulated:

4707 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
4708 whether between persons of the same or opposite sex;

4709 (b) masturbation;

4710 (c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

(g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(h) the explicit representation of the defecation or urination functions.

(11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

(13) "Vulnerable adult pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a vulnerable adult engaging in sexually explicit conduct;

(b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Section 102. Section **76-5b-201** is amended to read:

76-5b-201. Sexual exploitation of a minor -- Offenses.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person is guilty of]~~ (2) An actor commits sexual exploitation of a minor:

(a) when the ~~[person]~~ actor:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

(ii) intentionally distributes or views child pornography; or

(b) if the ~~[person]~~ actor is a minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection ~~[(1)]~~ (2)(a).

4742 ~~[(2)(a) Except as provided in Subsection (2)(b), sexual exploitation of a minor]~~
 4743 (3)(a)(i) A violation of Subsection (2) is a second degree felony.
 4744 ~~[(b) A violation of Subsection (1)]~~ (ii) Notwithstanding Subsection (3)(a)(i), a
 4745 violation of Subsection (2) for knowingly producing child pornography is a first degree felony
 4746 if the [person] actor produces original child pornography depicting a first degree felony that
 4747 involves:
 4748 [(i)] (A) the [person] actor or another person engaging in conduct with the minor that is
 4749 a violation of:
 4750 [(A)] (I) Section 76-5-402.1, rape of a child;
 4751 [(B)] (II) Section 76-5-402.3, object rape of a child;
 4752 [(C)] (III) Section 76-5-403.1, sodomy on a child; or
 4753 [(D)] (IV) Section [76-5-404.1] 76-5-404.3, aggravated sexual abuse of a child; or
 4754 [(ii)] (B) the minor being physically abused, as defined in Section 80-1-102.
 4755 [(3)] (b) It is a separate offense under this section:
 4756 [(a)] (i) for each minor depicted in the child pornography; and
 4757 [(b)] (ii) for each time the same minor is depicted in different child pornography.
 4758 (4)(a) It is an affirmative defense to a charge of violating this section that no minor
 4759 was actually depicted in the visual depiction or used in producing or advertising the visual
 4760 depiction.
 4761 (b) For a charge of violating this section for knowingly possessing or intentionally
 4762 viewing child pornography, it is an affirmative defense that:
 4763 (i) the defendant:
 4764 (A) did not solicit the child pornography from the minor depicted in the child
 4765 pornography;
 4766 (B) is not more than two years older than the minor depicted in the child pornography;
 4767 and
 4768 (C) upon request of a law enforcement agent or the minor depicted in the child
 4769 pornography, removes from an electronic device or destroys the child pornography and all
 4770 copies of the child pornography in the defendant's possession; and
 4771 (ii) the child pornography does not depict an offense under [Title 76,] Chapter 5, Part
 4772 4, Sexual Offenses.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Human Services who is required to view child pornography within the scope of the employee's employment; or

(g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of Human Services, including the divisions and offices within the Department of Human Services.

Section 103. Section **76-5b-202** is amended to read:

76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[(1) A person is guilty of]~~ (2) An actor commits sexual exploitation of a vulnerable adult if the ~~[person]~~ actor:

(a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute material that the ~~[person]~~ actor knows is vulnerable adult pornography; or

(B) intentionally distributes or views material that the ~~[person]~~ actor knows is vulnerable adult pornography; and

(ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult

4804 pornography lacks capacity to consent to the conduct described in Subsection ~~[(1)]~~ (2)(a); or
 4805 (b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the
 4806 vulnerable adult to be, sexually exploited as described in Subsection ~~[(1)]~~ (2)(a).

4807 ~~[(2) Sexual exploitation of a vulnerable adult]~~ (3) (a) A violation of Subsection (2) is a
 4808 third degree felony.

4809 ~~[(3)]~~ (b) It is a separate offense under this section:

4810 ~~[(a)]~~ (i) for each vulnerable adult depicted in the vulnerable adult pornography; and

4811 ~~[(b)]~~ (ii) for each time the same vulnerable adult is depicted in different vulnerable
 4812 adult pornography.

4813 (4) It is an affirmative defense to a charge of violating this section that no vulnerable
 4814 adult was actually depicted in the visual depiction or used in producing or advertising the
 4815 visual depiction.

4816 (5) In proving a violation of this section in relation to an identifiable vulnerable adult,
 4817 proof of the actual identity of the identifiable vulnerable adult is not required.

4818 (6) This section may not be construed to impose criminal or civil liability on:

4819 (a) any entity or an employee, director, officer, or agent of an entity, when acting
 4820 within the scope of employment, for the good faith performance of:

4821 (i) reporting or data preservation duties required under any federal or state law; or

4822 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult
 4823 pornography on any tangible or intangible property, or of detecting and reporting the presence
 4824 of vulnerable adult pornography on the property; or

4825 (b) any law enforcement officer acting within the scope of a criminal investigation.

4826 Section 104. Section **76-5b-203** is amended to read:

4827 **76-5b-203. Distribution of an intimate image -- Penalty.**

4828 (1) (a) As used in this section:

4829 ~~[(a)]~~ (i) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing,
 4830 providing, giving, granting admission to, providing access to, or otherwise transferring or
 4831 presenting an image to another individual, with or without consideration.

4832 ~~[(b)]~~ (ii) "Intimate image" means any visual depiction, photograph, film, video,
 4833 recording, picture, or computer or computer-generated image or picture, whether made or
 4834 produced by electronic, mechanical, or other means, that depicts:

4835 ~~[(i)]~~ (A) exposed human male or female genitals or pubic area, with less than an
4836 opaque covering;

4837 ~~[(ii)]~~ (B) a female breast with less than an opaque covering, or any portion of the
4838 female breast below the top of the areola; or

4839 ~~[(iii)]~~ (C) the individual engaged in any sexually explicit conduct.

4840 ~~[(e)]~~ (iii) "Sexually explicit conduct" means actual or simulated:

4841 ~~[(f)]~~ (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or
4842 oral-anal, whether between persons of the same or opposite sex;

4843 ~~[(ii)]~~ (B) masturbation;

4844 ~~[(iii)]~~ (C) bestiality;

4845 ~~[(iv)]~~ (D) sadistic or masochistic activities;

4846 ~~[(v)]~~ (E) exhibition of the genitals, pubic region, buttocks, or female breast of any
4847 individual;

4848 ~~[(vi)]~~ (F) visual depiction of nudity or partial nudity;

4849 ~~[(vii)]~~ (G) fondling or touching of the genitals, pubic region, buttocks, or female
4850 breast; or

4851 ~~[(viii)]~~ (H) explicit representation of the defecation or urination functions.

4852 ~~[(d)]~~ (iv) "Simulated sexually explicit conduct" means a feigned or pretended act of
4853 sexually explicit conduct that duplicates, within the perception of an average person, the
4854 appearance of an actual act of sexually explicit conduct.

4855 (v) "Single criminal episode" means the same as that term is defined in Section
4856 76-1-401.

4857 (b) Terms defined in Section 76-1-101.5 apply to this section.

4858 (2) (a) An actor commits the offense of distribution of an intimate image if:

4859 (i) the actor knowingly or intentionally distributes to a third party, or knowingly
4860 duplicates or copies an intimate image of an individual who is 18 years old or older and knows
4861 or should know that the distribution, duplication or copying would cause a reasonable person to
4862 suffer emotional distress or harm;

4863 (ii) the actor has not received consent from the individual depicted in the image to
4864 distribute the intimate image;

4865 (iii) the intimate image was created by or provided to the actor under circumstances in

which the individual depicted in the image has a reasonable expectation of privacy; and

(iv) except as provided in Subsection (2)(b), actual emotional distress or harm is caused to the individual depicted in the image as a result of the distribution.

(b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a) if:

(i) the individual depicted in the intimate image was the victim of a crime;

(ii) the intimate image was provided to law enforcement as part of an investigation or prosecution of a crime committed against the victim;

(iii) the intimate image was distributed without a legitimate law enforcement or investigative purpose by an individual who had access to the intimate image due to the individual's association with the investigation or prosecution described in Subsection (2)(b)(ii); and

(iv) the victim is incapacitated or deceased.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a single criminal episode.

~~[(3)]~~ (4) This section does not apply to:

(a) except as provided in Section 76-5b-203.5:

(i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

(iv) court proceedings or any other judicial proceeding; or

(v) lawful and generally accepted medical practices and procedures;

(b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image;

(c) an intimate image that is portrayed in a lawful commercial setting; or

(d) an intimate image that is related to a matter of public concern or interest.

~~[(4)]~~ (5) (a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,

information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(i) the distribution of an intimate image by the Internet service provider occurs only incidentally through the provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the provider does not intentionally aid or abet in the distribution of the intimate image; and

(iii) the provider does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the intimate image.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and

(iii) the hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

(c) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

~~[(5)(a) Distribution of an intimate image is a class A misdemeanor except under Subsection (5)(b).]~~

~~[(b) Distribution of an intimate image is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.]~~

Section 105. Section **76-5b-203.5** is amended to read:

76-5b-203.5. Misuse of intimate image during a criminal action.

(1) (a) As used in this section~~["intimate image" has the same meaning as];~~

(i) "Criminal action" means the same as that term is defined in Section 77-1-3.

(ii) "Intimate" means the same as that term is defined in Section 76-5b-203.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~[(2) Any actor who]~~ (2) An actor commits misuse of intimate image during a criminal action if the actor:

(a) obtains access to an intimate image in the course of a criminal action ~~[as defined in Subsection 77-1-3(1) may not];~~ and

(b) intentionally ~~[display, duplicate, copy, or share]~~ displays, duplicates, copies, or shares the intimate image, unless:

~~[(a)]~~ (i) displaying, duplicating, copying, or sharing the intimate image is done solely for the purpose of the adjudication, defense, prosecution or investigation of a criminal matter involving the intimate image;

~~[(b)]~~ (ii) each individual who is the subject of the intimate image gives written permission to display, duplicate, copy, or share the intimate image; or

~~[(c)]~~ (iii) the intimate image was not created by or provided to the actor under circumstances in which the depicted individual has a reasonable expectation of privacy.

(3) ~~[An actor who violates]~~ A violation of Subsection (2) is [guilty of]:

(a) a class A misdemeanor for a first offense; or

(b) a third degree felony for each subsequent offense.

(4) Nothing in this section precludes an agency that employs an individual who is involved in a criminal action from establishing internal policies for an individual's violation of this section.

Section 106. Section **76-5b-204** is amended to read:

76-5b-204. Sexual extortion -- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Adult" means an individual 18 years ~~[of age]~~ old or older.

~~[(b)]~~ (ii) "Child" means any individual under ~~[the age of]~~ 18 years old.

(iii) "Dangerous weapon" means the same as that term is defined in Section 76-1-101.5.

~~[(c)]~~ (iv) "Distribute" means the same as that term is defined in Section 76-5b-203.

4959 ~~[(d)]~~ (v) "Intimate image" means the same as that term is defined in Section 76-5b-203.

4960 ~~[(e)]~~ (vi) "Position of special trust" means the same as that term is defined in Section

4961 ~~[76-5-401.1]~~ 76-5-404.1.

4962 ~~[(f)]~~ (vii) "Sexually explicit conduct" means the same as that term is defined in

4963 ~~[Subsection]~~ Section 76-5b-203~~[(1)(c)]~~.

4964 ~~[(g)]~~ (viii) "Simulated sexually explicit conduct" means the same as that term is

4965 defined in Section 76-5b-203.

4966 ~~[(h)]~~ (ix) "Vulnerable adult" means the same as that term is defined in Section

4967 76-5-111.

4968 (b) Terms defined in Section 76-1-101.5 apply to this section.

4969 (2) (a) An ~~[individual]~~ actor who is 18 years old or older commits the offense of sexual
4970 extortion if the ~~[individual]~~ actor:

4971 ~~[(a)]~~ (i) with an intent to coerce a victim to engage in sexual contact, in sexually
4972 explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute
4973 an image, video, or other recording of any individual naked or engaged in sexually explicit
4974 conduct, communicates in person or by electronic means a threat:

4975 ~~[(i)]~~ (A) to the victim's person, property, or reputation; or

4976 ~~[(ii)]~~ (B) to distribute an intimate image or video of the victim; or

4977 ~~[(b)]~~ (ii) knowingly causes a victim to engage in sexual contact, in sexually explicit
4978 conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any
4979 image, video, or other recording of any individual naked or engaged in sexually explicit
4980 conduct by means of a threat:

4981 ~~[(i)]~~ (A) to the victim's person, property, or reputation; or

4982 ~~[(ii)]~~ (B) to distribute an intimate image or video of the victim.

4983 (b) An actor commits aggravated sexual extortion when, in conjunction with the
4984 offense described in Subsection (2)(a), any of the following circumstances have been charged
4985 and admitted or found true in the action for the offense:

4986 (i) the victim is a child or vulnerable adult;

4987 (ii) the offense was committed by the use of a dangerous weapon or by violence,
4988 intimidation, menace, fraud, or threat of physical harm, or was committed during the course of
4989 a kidnapping;

4990 (iii) the actor caused bodily injury or severe psychological injury to the victim during
4991 or as a result of the offense;

4992 (iv) the actor was a stranger to the victim or became a friend of the victim for the
4993 purpose of committing the offense;

4994 (v) the actor, before sentencing for the offense, was previously convicted of any sexual
4995 offense;

4996 (vi) the actor occupied a position of special trust in relation to the victim;

4997 (vii) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
4998 sexual acts by the victim with any other individual, or sexual performance by the victim before
4999 any other individual, human trafficking, or human smuggling; or

5000 (viii) the actor caused the penetration, however slight, of the genital or anal opening of
5001 the victim by any part or parts of the human body, or by any other object.

5002 (3) (a) (i) ~~[Sexual extortion]~~ A violation of Subsection (2)(a) is a third degree felony.

5003 ~~[(b) Aggravated sexual extortion]~~ (ii) A violation of Subsection (2)(b) of an adult is a
5004 second degree felony.

5005 ~~[(c) Aggravated sexual extortion]~~ (iii) A violation of Subsection (2)(b) of a child or a
5006 vulnerable adult is a first degree felony.

5007 ~~[(4) An individual commits aggravated sexual extortion when, in conjunction with the~~
5008 ~~offense described in Subsection (2), any of the following circumstances have been charged and~~
5009 ~~admitted or found true in the action for the offense:]~~

5010 ~~[(a) the victim is a child or vulnerable adult;]~~

5011 ~~[(b) the offense was committed by the use of a dangerous weapon, as defined in~~
5012 ~~Section 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or~~
5013 ~~was committed during the course of a kidnapping;]~~

5014 ~~[(c) the individual caused bodily injury or severe psychological injury to the victim~~
5015 ~~during or as a result of the offense;]~~

5016 ~~[(d) the individual was a stranger to the victim or became a friend of the victim for the~~
5017 ~~purpose of committing the offense;]~~

5018 ~~[(e) the individual, before sentencing for the offense, was previously convicted of any~~
5019 ~~sexual offense;]~~

5020 ~~[(f) the individual occupied a position of special trust in relation to the victim;]~~

~~[(g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other individual, or sexual performance by the victim before any other individual, human trafficking, or human smuggling, or]~~

~~[(h) the individual caused the penetration, however slight, of the genital or anal opening of the victim by any part or parts of the human body, or by any other object.]~~

~~[(5)]~~ (b) An ~~[individual]~~ actor commits a separate offense under this section:

~~[(a)]~~ (i) for each victim the ~~[individual]~~ actor subjects to the offense outlined in Subsection (2)(a); and

~~[(b)]~~ (ii) for each separate time the ~~[individual]~~ actor subjects a victim to the offense outlined in Subsection (2)(a).

~~[(6)]~~ (c) This section does not preclude an ~~[individual]~~ actor from being charged and convicted of a separate criminal act if the ~~[individual]~~ actor commits the separate criminal act while the ~~[individual]~~ actor violates or attempts to violate this section.

~~[(7)]~~ (4) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not subject to liability under this section related to content provided by a user of the interactive computer service.

Section 107. Section **76-5b-205** is amended to read:

76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Child" means an individual under ~~[the age of]~~ 18 years old.

~~[(b)]~~ (ii) "Counterfeit intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that has been edited, manipulated, or altered to depict the likeness of an identifiable individual and purports to, or is made to appear to, depict that individual's:

~~[(i)]~~ (A) exposed human male or female genitals or pubic area, with less than an opaque covering;

~~[(ii)]~~ (B) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

~~[(iii)]~~ (C) the individual engaged in any sexually explicit conduct or simulated sexually explicit conduct.

5052 ~~[(c)]~~ (iii) "Distribute" means the same as that term is defined in Section 76-5b-203.

5053 ~~[(d)]~~ (iv) "Sexually explicit conduct" means the same as that term is defined in Section

5054 76-5b-203.

5055 ~~[(e)]~~ (v) "Simulated sexually explicit conduct" means the same as that term is defined

5056 in Section 76-5b-203.

5057 (vi) "Single criminal episode" means the same as that term is defined in Section

5058 76-1-401.

5059 (b) Terms defined in Section 76-1-101.5 apply to this section.

5060 (2) (a) An actor commits the offense of unlawful distribution of a counterfeit intimate

5061 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the

5062 actor knows or should reasonably know would cause a reasonable person to suffer emotional or

5063 physical distress or harm, if:

5064 ~~[(a)]~~ (i) the actor has not received consent from the depicted individual to distribute the

5065 counterfeit intimate image; and

5066 ~~[(b)]~~ (ii) the counterfeit intimate image was created or provided by the actor without

5067 the knowledge and consent of the depicted individual.

5068 ~~[(3)]~~ (b) An ~~[individual]~~ actor commits aggravated unlawful distribution of a

5069 counterfeit intimate image if, in committing the offense described in Subsection (2)(a), the

5070 individual depicted in the counterfeit intimate image is a child.

5071 (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A

5072 misdemeanor.

5073 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is

5074 knowing or intentional is a third degree felony on a second or subsequent conviction for an

5075 offense under this section that arises from a single criminal episode.

5076 (b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree

5077 felony.

5078 (ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is

5079 knowing or intentional is a second degree felony on a second or subsequent conviction for an

5080 offense under this section that arises from a single criminal episode.

5081 (c) This section does not apply to an actor who engages in conduct that constitutes a

5082 violation of this section to the extent that the actor is chargeable, for the same conduct, under

5083 Section 76-5b-201, sexual exploitation of a minor.

5084 (4) This section does not apply to:

5085 (a) (i) lawful practices of law enforcement agencies;

5086 (ii) prosecutorial agency functions;

5087 (iii) the reporting of a criminal offense;

5088 (iv) court proceedings or any other judicial proceeding; or

5089 (v) lawful and generally accepted medical practices and procedures;

5090 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily
5091 allows public exposure of the image;

5092 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

5093 (d) a counterfeit intimate image that is related to a matter of public concern or interest
5094 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
5095 and 15 of the Utah Constitution.

5096 (5) (a) This section does not apply to an Internet service provider or interactive
5097 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
5098 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
5099 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
5100 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
5101 in 47 U.S.C. Sec. 522, if:

5102 (i) the distribution of a counterfeit intimate image by the Internet service provider
5103 occurs only incidentally through the provider's function of:

5104 (A) transmitting or routing data from one person to another person; or

5105 (B) providing a connection between one person and another person;

5106 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
5107 intimate image; and

5108 (iii) the provider does not knowingly receive from or through a person who distributes
5109 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
5110 specific condition for permitting the person to distribute the counterfeit intimate image.

5111 (b) This section does not apply to a hosting company, as defined in Section
5112 76-10-1230, if:

5113 (i) the distribution of a counterfeit intimate image by the hosting company occurs only

5114 incidentally through the hosting company's function of providing data storage space or data
5115 caching to a person;

5116 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
5117 of the counterfeit intimate image;

5118 (iii) the hosting company does not knowingly receive from or through a person who
5119 distributes the counterfeit intimate image a fee greater than the fee generally charged by the
5120 provider, as a specific condition for permitting the person to distribute, store, or cache the
5121 counterfeit intimate image; and

5122 (iv) the hosting company immediately removes the counterfeit intimate image upon
5123 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly
5124 depicted in the counterfeit intimate image.

5125 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
5126 section if it complies with Section 76-10-1231.

5127 ~~[(6) This section does not apply to an actor who engages in conduct that constitutes a~~
5128 ~~violation of this section to the extent that the actor is chargeable, for the same conduct, under~~
5129 ~~Section 76-5b-201, sexual exploitation of a minor.]~~

5130 ~~[(7)(a) Except as provided in Subsection (7)(b), knowing or intentional unlawful~~
5131 ~~distribution of a counterfeit intimate image is a class A misdemeanor.]~~

5132 ~~[(b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a~~
5133 ~~third degree felony on a second or subsequent conviction for an offense under this section that~~
5134 ~~arises from a separate criminal episode as defined in Section 76-1-401.]~~

5135 ~~[(c) Except as provided in Subsection (7)(d), knowing or intentional aggravated~~
5136 ~~unlawful distribution of a counterfeit intimate image is a third degree felony.]~~

5137 ~~[(d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate~~
5138 ~~image is a second degree felony on a second or subsequent conviction for an offense under this~~
5139 ~~section that arises from a separate criminal episode as defined in Section 76-1-401.]~~

5140 Section 108. Section **76-6-102** is amended to read:

5141 **76-6-102. Arson.**

5142 (1) A person is guilty of arson if, under circumstances not amounting to aggravated
5143 arson, the person by means of fire or explosives unlawfully and intentionally damages:

5144 (a) any property with intention of defrauding an insurer; or

(b) the property of another.

(2) A violation of Subsection (1)(a) is a second degree felony.

(3) A violation of Subsection (1)(b) is a second degree felony if:

(a) the damage caused is or exceeds \$5,000 in value;

(b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers serious bodily injury as defined in Section ~~[76-1-601]~~ 76-1-101.5;

(c) (i) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value; and

(ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(4) A violation of Subsection (1)(b) is a third degree felony if:

(a) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value;

(b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers substantial bodily injury as defined in Section ~~[76-1-601]~~ 76-1-101.5;

(c) the fire or explosion endangers human life; or

(d) (i) the damage caused is or exceeds \$500 but is less than \$1,500 in value; and

(ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(5) A violation of Subsection (1)(b) is a class A misdemeanor if the damage caused:

(a) is or exceeds \$500 but is less than \$1,500 in value; or

(b) (i) is less than \$500; and

(ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(6) A violation of Subsection (1)(b) is a class B misdemeanor if the damage caused is less than \$500.

Section 109. Section **76-6-203** is amended to read:

76-6-203. Aggravated burglary.

(1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:

5176 (a) causes bodily injury to any person who is not a participant in the crime;
5177 (b) uses or threatens the immediate use of a dangerous weapon against any person who
5178 is not a participant in the crime; or
5179 (c) possesses or attempts to use any explosive or dangerous weapon.
5180 (2) Aggravated burglary is a first degree felony.
5181 (3) As used in this section, "dangerous weapon" has the same definition as under
5182 Section ~~[76-1-601]~~ 76-1-101.5.
5183 Section 110. Section **76-6-302** is amended to read:
5184 **76-6-302. Aggravated robbery.**
5185 (1) A person commits aggravated robbery if in the course of committing robbery, he:
5186 (a) uses or threatens to use a dangerous weapon as defined in Section ~~[76-1-601]~~
5187 76-1-101.5;
5188 (b) causes serious bodily injury upon another; or
5189 (c) takes or attempts to take an operable motor vehicle.
5190 (2) Aggravated robbery is a first degree felony.
5191 (3) For the purposes of this part, an act shall be considered to be "in the course of
5192 committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the
5193 immediate flight after the attempt or commission of a robbery.
5194 Section 111. Section **76-7-101** is amended to read:
5195 **76-7-101. Bigamy -- Penalty -- Defense.**
5196 (1) An individual is guilty of bigamy if:
5197 (a) the individual purports to marry another individual; and
5198 (b) knows or reasonably should know that one or both of the individuals described in
5199 Subsection (1)(a) are legally married to another individual.
5200 (2) An individual who violates Subsection (1) is guilty of an infraction.
5201 (3) An individual is guilty of a third degree felony if the individual induces bigamy:
5202 (a) under fraudulent or false pretenses; or
5203 (b) by threat or coercion.
5204 (4) An individual is guilty of a second degree felony if the individual:
5205 (a) cohabitates with another individual with whom the individual is engaged in bigamy
5206 as described in Subsection (1); and

(b) in furtherance of the conduct described in Subsection (4)(a), commits a felony offense, or for Subsection (4)(b)~~(vii)~~(xiii), a misdemeanor offense, in violation of one or more of the following:

(i) Section 76-5-109, child abuse;

(ii) Section 76-5-109.2, aggravated child abuse;

(iii) Section 76-5-109.3, child abandonment;

(iv) Section 76-5-111, abuse of a vulnerable adult;

(v) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

(vi) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

(vii) Section 76-5-111.4, financial exploitation of a vulnerable adult.

~~(viii)~~ (viii) Chapter 5, Part 2, Criminal Homicide;

(ix) Section 76-5-208, child abuse homicide;

~~(x)~~ (x) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

~~(xi)~~ (xi) Chapter 5, Part 4, Sexual Offenses;

~~(iv) Section 76-5-109, child abuse -- child abandonment;~~

~~(v) Section 76-5-111, abuse, neglect, or exploitation of a vulnerable adult;~~

~~(vi) Section 76-5-209, child abuse homicide;~~

~~(vii) Section 76-9-702.1, sexual battery;~~

~~(viii)~~ (xii) Section 76-7-201, criminal nonsupport;

(xiii) Section 76-9-702.1, sexual battery;

~~(ix)~~ (xiv) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or

~~(x)~~ (xv) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

(5) It is a defense to prosecution under Subsection (2) that:

(a) the individual ceased the practice of bigamy as described in Subsection (1) under reasonable fear of coercion or bodily harm;

(b) the individual entered the practice of bigamy, as described in Subsection (1), as a minor and ceased the practice of bigamy at any time after the individual entered the practice of bigamy; or

(c) law enforcement discovers that the individual practices bigamy, as described in Subsection (1), as a result of the individual's efforts to protect the safety and welfare of another individual.

Section 112. Section **76-7-305** is amended to read:

76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains from the woman on whom the abortion is to be performed a voluntary and informed written consent that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

(a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant presents the information module to the pregnant woman;

(b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;

(c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):

(i) documents that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman, upon her request, a copy of the documentation described in Subsection (2)(c)(i); and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman;

(d) after the pregnant woman views the entire information module, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman of:

(i) the nature of the proposed abortion procedure;

(ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

5269 fetus;

5270 (iii) the risks and alternatives to the abortion procedure or treatment;

5271 (iv) the options and consequences of aborting a medication-induced abortion, if the

5272 proposed abortion procedure is a medication-induced abortion;

5273 (v) the probable gestational age and a description of the development of the unborn

5274 child at the time the abortion would be performed;

5275 (vi) the medical risks associated with carrying her child to term;

5276 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant

5277 woman, upon her request; and

5278 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn

5279 child has or may have Down syndrome, the Department of Health website containing the

5280 information described in Section 26-10-14, including the information on the informational

5281 support sheet; and

5282 (e) after the pregnant woman views the entire information module, a staff member of

5283 the abortion clinic or hospital provides to the pregnant woman:

5284 (i) on a document that the pregnant woman may take home:

5285 (A) the address for the department's website described in Section 76-7-305.5; and

5286 (B) a statement that the woman may request, from a staff member of the abortion clinic

5287 or hospital where the woman viewed the information module, a printed copy of the material on

5288 the department's website;

5289 (ii) a printed copy of the material on the department's website described in Section

5290 76-7-305.5, if requested by the pregnant woman; and

5291 (iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the

5292 disposition of the aborted fetus.

5293 (3) Before performing an abortion, the physician who is to perform the abortion shall:

5294 (a) in a face-to-face consultation, provide the information described in Subsection

5295 (2)(d), unless the attending physician or referring physician is the individual who provided the

5296 information required under Subsection (2)(d); and

5297 (b) (i) obtain from the pregnant woman a written certification that the information

5298 required to be provided under Subsection (2) and this Subsection (3) was provided in

5299 accordance with the requirements of Subsection (2) and this Subsection (3);

5300 (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and
5301 (iii) ensure that:
5302 (A) the woman has received the information described in Subsections 26-21-33(3) and
5303 (4); and
5304 (B) if the woman has a preference for the disposition of the aborted fetus, the woman
5305 has informed the health care facility of the woman's decision regarding the disposition of the
5306 aborted fetus.

5307 (4) When a serious medical emergency compels the performance of an abortion, the
5308 physician shall inform the woman prior to the abortion, if possible, of the medical indications
5309 supporting the physician's judgment that an abortion is necessary.

5310 (5) If an ultrasound is performed on a woman before an abortion is performed, the
5311 individual who performs the ultrasound, or another qualified individual, shall:

5312 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
5313 manner to permit her to:

5314 (i) view the images, if she chooses to view the images; or
5315 (ii) not view the images, if she chooses not to view the images;

5316 (b) simultaneously display the ultrasound images in order to permit the woman to:

5317 (i) view the images, if she chooses to view the images; or
5318 (ii) not view the images, if she chooses not to view the images;

5319 (c) inform the woman that, if she desires, the person performing the ultrasound, or
5320 another qualified person shall provide a detailed description of the ultrasound images,
5321 including:

5322 (i) the dimensions of the unborn child;
5323 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
5324 (iii) the presence of external body parts or internal organs, if present and viewable; and
5325 (d) provide the detailed description described in Subsection (5)(c), if the woman
5326 requests it.

5327 (6) The information described in Subsections (2), (3), and (5) is not required to be
5328 provided to a pregnant woman under this section if the abortion is performed for a reason
5329 described in:

5330 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician

5331 concur, in writing, that the abortion is necessary to avert:

5332 (i) the death of the woman on whom the abortion is performed; or

5333 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

5334 of the woman on whom the abortion is performed; or

5335 (b) Subsection 76-7-302(3)(b)(ii).

5336 (7) In addition to the criminal penalties described in this part, a physician who violates

5337 the provisions of this section:

5338 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

5339 and

5340 (b) shall be subject to:

5341 (i) suspension or revocation of the physician's license for the practice of medicine and

5342 surgery in accordance with Section 58-67-401 or 58-68-401; and

5343 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

5344 (8) A physician is not guilty of violating this section for failure to furnish any of the

5345 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

5346 (a) the physician can demonstrate by a preponderance of the evidence that the

5347 physician reasonably believed that furnishing the information would have resulted in a severely

5348 adverse effect on the physical or mental health of the pregnant woman;

5349 (b) in the physician's professional judgment, the abortion was necessary to avert:

5350 (i) the death of the woman on whom the abortion is performed; or

5351 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

5352 of the woman on whom the abortion is performed;

5353 (c) the pregnancy was the result of rape or rape of a child, as ~~[defined]~~ described in

5354 Sections 76-5-402 and 76-5-402.1;

5355 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and

5356 Section 76-7-102; or

5357 (e) at the time of the abortion, the pregnant woman was 14 years ~~[of age]~~ old or

5358 younger.

5359 (9) A physician who complies with the provisions of this section and Section

5360 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain

5361 informed consent under Section 78B-3-406.

(10) (a) The department shall provide an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

(11) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 113. Section **76-8-309** is amended to read:

76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.

(1) (a) (i) A prisoner is guilty of escape if the prisoner leaves official custody without lawful authorization.

(ii) If a prisoner obtains authorization to leave official custody by means of deceit, fraud, or other artifice, the prisoner has not received lawful authorization.

(b) Escape under this Subsection (1) is a third degree felony except as provided under Subsection (1)(c).

(c) Escape under this Subsection (1) is a second degree felony if:

(i) the actor escapes from a state prison; or

(ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202; and

(B) the actor is an employee at or a volunteer of a law enforcement agency, the Department of Corrections, a county or district attorney's office, the office of the state attorney general, the Board of Pardons and Parole, or the courts, the Judicial Council, the Administrative Office of the Courts, or similar administrative units in the judicial branch of government.

(2) (a) A prisoner is guilty of aggravated escape if in the commission of an escape the

5393 prisoner uses a dangerous weapon, as defined in Section [~~76-1-601~~] 76-1-101.5, or causes
5394 serious bodily injury to another.

5395 (b) Aggravated escape is a first degree felony.

5396 (3) Any prison term imposed upon a prisoner for escape under this section shall run
5397 consecutively with any other sentence.

5398 (4) For the purposes of this section:

5399 (a) "Confinement" means the prisoner is:

5400 (i) housed in a state prison or any other facility pursuant to a contract with the Utah
5401 Department of Corrections after being sentenced and committed and the sentence has not been
5402 terminated or voided or the prisoner is not on parole;

5403 (ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county
5404 jail after sentencing and commitment and the sentence has not been terminated or voided or the
5405 prisoner is not on parole; or

5406 (iii) lawfully detained following arrest.

5407 (b) "Escape" is considered to be a continuing activity commencing with the conception
5408 of the design to escape and continuing until the escaping prisoner is returned to official custody
5409 or the prisoner's attempt to escape is thwarted or abandoned.

5410 (c) "Official custody" means arrest, whether with or without warrant, or confinement in
5411 a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement
5412 pursuant to an order of the court or sentenced and committed and the sentence has not been
5413 terminated or voided or the prisoner is not on parole. A person is considered confined in the
5414 state prison if the person:

5415 (i) without authority fails to return to the person's place of confinement from work
5416 release or home visit by the time designated for return;

5417 (ii) is in prehearing custody after arrest for parole violation;

5418 (iii) is being housed in a county jail, after felony commitment, pursuant to a contract
5419 with the Department of Corrections; or

5420 (iv) is being transported as a prisoner in the state prison by correctional officers.

5421 (d) "Prisoner" means any person who is in official custody and includes persons under
5422 trusty status.

5423 (e) "Volunteer" means any person who donates service without pay or other

5424 compensation except expenses actually and reasonably incurred as approved by the supervising
5425 agency.

5426 Section 114. Section **76-8-316** is amended to read:

5427 **76-8-316. Influencing, impeding, or retaliating against a judge or member of the**
5428 **Board of Pardons and Parole or acting against a family member of a judge or a member**
5429 **of the Board of Pardons and Parole.**

5430 (1) As used in this section:

5431 (a) "Board member" means an appointed member of the Board of Pardons and Parole.

5432 (b) "Family member" means parents, spouse, surviving spouse, children, and siblings
5433 of a judge or board member.

5434 (c) "Judge" means judges of all courts of record and courts not of record and court
5435 commissioners.

5436 (2) A person is guilty of a third degree felony if the person threatens to assault, kidnap,
5437 or murder a judge, a family member of a judge, a board member, or a family member of a
5438 board member with the intent to impede, intimidate, or interfere with the judge or board
5439 member while engaged in the performance of the judge's or board member's official duties or
5440 with the intent to retaliate against the judge or board member on account of the performance of
5441 those official duties.

5442 (3) A person is guilty of a second degree felony if the person commits an assault on a
5443 judge, a family member of a judge, a board member, or a family member of a board member
5444 with the intent to impede, intimidate, or interfere with the judge or board member while
5445 engaged in the performance of the judge's or board member's official duties, or with the intent
5446 to retaliate against the judge or board member on account of the performance of those official
5447 duties.

5448 (4) A person is guilty of a first degree felony if the person commits aggravated assault
5449 on a judge, a family member of a judge, a board member, or a family member of a board
5450 member with the intent to impede, intimidate, or interfere with the judge or board member
5451 while engaged in the performance of the judge's or board member's official duties or with the
5452 intent to retaliate against the judge or board member on account of the performance of those
5453 official duties.

5454 (5) A person is guilty of a first degree felony if the person commits attempted murder

on a family member of a judge or a family member of a board member with the intent to impede, intimidate, or interfere with the judge or board member while engaged in the performance of the judge's or board member's official duties or with the intent to retaliate against the judge or board member on account of the performance of those official duties.

(6) A member of the Board of Pardons and Parole is an executive officer for purposes of Subsection 76-5-202[(1)(m)](2)(a)(xiii).

Section 115. Section **76-8-318** is amended to read:

76-8-318. Assault or threat of violence against child welfare worker -- Penalty.

(1) As used in this section:

(a) "Assault" means the same as that term is defined in Section 76-5-102.

(b) "Child welfare worker" means an employee of the Division of Child and Family Services created in Section 62A-4a-103.

(c) "Threat of violence" means the same as that term is defined in Section 76-5-107.

(2) An individual who commits an assault or threat of violence against a child welfare worker is guilty of a class A misdemeanor if:

(a) the individual is not:

(i) a prisoner or an individual detained under Section 77-7-15; or

(ii) a minor in the custody of or receiving services from a division within the Department of Human Services;

(b) the individual knew that the victim was a child welfare worker; and

(c) the child welfare worker was acting within the scope of the child welfare worker's authority at the time of the assault or threat of violence.

(3) An individual who violates this section is guilty of a third degree felony if the individual:

(a) causes substantial bodily injury, as defined in Section ~~[76-1-601]~~ 76-1-101.5; and

(b) acts intentionally or knowingly.

Section 116. Section **76-9-101** is amended to read:

76-9-101. Riot -- Penalties.

(1) An individual is guilty of riot if the individual:

(a) simultaneously with two or more other individuals engages in violent conduct, knowingly or recklessly creating a substantial risk of causing public alarm;

(b) assembles with two or more other individuals with the purpose of engaging, soon thereafter, in violent conduct, knowing, that two or more other individuals in the assembly have the same purpose; or

(c) assembles with two or more other individuals with the purpose of committing an offense against a person, or the property of another person who the individual supposes to be guilty of a violation of law, believing that two or more other individuals in the assembly have the same purpose.

(2) Any individual who refuses to comply with a lawful order to withdraw prior to, during, or immediately following a violation of Subsection (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that withdrawal must take place over private property; provided, however, that an individual who withdraws in compliance with an order to withdraw may not incur criminal or civil liability by virtue of acts reasonably necessary to accomplish the withdrawal.

(3) Except as provided in Subsection (4), riot is a class B misdemeanor.

(4) Riot is a third degree felony if, in the course of the conduct:

(a) the individual causes substantial or serious bodily injury;

(b) the individual causes substantial property damage or commits arson; or

(c) the individual was in possession of a dangerous weapon as defined in Section ~~76-1-601~~ 76-1-101.5.

(5) An individual arrested for a violation of Subsection (4) may not be released from custody before the individual appears before a magistrate or a judge.

(6) The court shall order a defendant convicted under Subsection (4) to pay restitution in accordance with Section 77-38b-205.

Section 117. Section **76-9-702** is amended to read:

76-9-702. Lewdness.

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, sexual abuse of a minor, unlawful sexual conduct with a 16- or 17-year-old, custodial sexual relations ~~[or misconduct]~~ under Section 76-5-412 ~~[or]~~, custodial sexual misconduct under Section 76-5-412.2, custodial sexual relations with youth receiving state services under Section 76-5-413, custodial sexual misconduct with youth receiving state services under Section

5517 76-5-413.2, or an attempt to commit any of these offenses, performs any of the following acts
5518 in a public place or under circumstances which the person should know will likely cause
5519 affront or alarm to, on, or in the presence of another who is 14 years ~~[of age]~~ old or older:

5520 (a) an act of sexual intercourse or sodomy;

5521 (b) exposes his or her genitals, the female breast below the top of the areola, the
5522 buttocks, the anus, or the pubic area;

5523 (c) masturbates; or

5524 (d) any other act of lewdness.

5525 (2) (a) A person convicted the first or second time of a violation of Subsection (1) is
5526 guilty of a class B misdemeanor, except under Subsection (2)(b).

5527 (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony
5528 if at the time of the violation:

5529 (i) the person is a sex offender as defined in Section 77-27-21.7;

5530 (ii) the person has been previously convicted two or more times of violating Subsection
5531 (1); or

5532 (iii) the person has previously been convicted of a violation of Subsection (1) and has
5533 also previously been convicted of a violation of Section 76-9-702.5.

5534 (c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(17), a plea of
5535 guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77,
5536 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

5537 (ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been
5538 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

5539 (3) A woman's breast feeding, including breast feeding in any location where the
5540 woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,
5541 irrespective of whether or not the breast is covered during or incidental to feeding.

5542 Section 118. Section **76-9-702.1** is amended to read:

5543 **76-9-702.1. Sexual battery.**

5544 (1) A person is guilty of sexual battery if the person, under circumstances not
5545 amounting to an offense under Subsection (2), intentionally touches, whether or not through
5546 clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a
5547 female person, and the actor's conduct is under circumstances the actor knows or should know

5548 will likely cause affront or alarm to the person touched.

5549 (2) Offenses referred to in Subsection (1) are:

5550 (a) rape, Section 76-5-402;

5551 (b) rape of a child, Section 76-5-402.1;

5552 (c) object rape, Section 76-5-402.2;

5553 (d) object rape of a child, Section 76-5-402.3;

5554 (e) forcible sodomy, Subsection 76-5-403(2);

5555 (f) sodomy on a child, Section 76-5-403.1;

5556 (g) forcible sexual abuse, Section 76-5-404;

5557 (h) sexual abuse of a child, [~~Subsection 76-5-404.1(2)~~] Section 76-5-404.1;

5558 (i) aggravated sexual abuse of a child, [~~Subsection 76-5-404.1(4)~~] Section 76-5-404.3;

5559 (j) aggravated sexual assault, Section 76-5-405; and

5560 (k) an attempt to commit any offense under this Subsection (2).

5561 (3) Sexual battery is a class A misdemeanor.

5562 (4) For purposes of Subsection 77-41-102(17) only, a plea of guilty or nolo contendere

5563 to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in

5564 Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge

5565 under this section has been subsequently reduced or dismissed in accordance with the plea in

5566 abeyance agreement.

5567 Section 119. Section **76-9-804** is amended to read:

5568 **76-9-804. Convicted criminal gang offender -- Prohibition.**

5569 (1) A person who has been convicted of a crime for which the penalty was enhanced

5570 under Section 76-3-203.1 may not, except where a greater penalty is applicable under this title,

5571 possess a dangerous weapon as defined in either Section [~~76-1-601~~] 76-1-101.5 or 76-10-501,

5572 ammunition, or a facsimile of a firearm within five years after the conviction.

5573 (2) A violation of Subsection (1) is a class A misdemeanor.

5574 Section 120. Section **76-9-1003** is amended to read:

5575 **76-9-1003. Detention or arrest -- Determination of immigration status.**

5576 (1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer

5577 who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop,

5578 detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is

unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1) and the officer is otherwise unable to verify the identity of the person, the officer:

(i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

(ii) may attempt to verify the immigration status of the person, except as exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except that if the person is arrested and booked for a class B or C misdemeanor, the arresting law enforcement officer or the law enforcement agency booking the person shall attempt to verify the immigration status of the person.

(b) In individual cases, the law enforcement officer may forego the verification of immigration status under Subsection (1)(a) if the determination could hinder or obstruct a criminal investigation.

(c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(d) Subsection (1)(a) does not apply to a county or municipality when it has only one law enforcement officer on duty and response support from another law enforcement agency is not available.

(2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the officer makes observations that give the officer reasonable suspicion that the operator or any of the passengers in the vehicle are violating Section 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-310, 76-5-310.1, or 76-10-2901, which concern smuggling, human trafficking, and transporting illegal aliens, the officer shall, to the extent possible within a reasonable period of time:

(a) detain the occupants of the vehicle to investigate the suspected violations; and

(b) inquire regarding the immigration status of the occupants of the vehicle.

(3) When a person under Subsection (1) is arrested or booked into a jail, juvenile detention facility, or correctional facility, the arresting officer or the booking officer shall ensure that a request for verification of immigration status of the arrested or booked person is submitted as promptly as is reasonably possible.

(4) The law enforcement agency that has custody of a person verified to be an illegal alien shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.

(5) A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Section 121. Section **76-10-1302** is amended to read:

76-10-1302. Prostitution.

(1) An individual except for a child under Section 76-10-1315 is guilty of prostitution when the individual:

(a) engages, offers, or agrees to engage in any sexual activity with another individual for a fee, or the functional equivalent of a fee;

(b) takes steps in arranging a meeting through any form of advertising, agreeing to meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee or the functional equivalent of a fee; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, prostitution is a class B misdemeanor.

(b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.

(3) A prosecutor may not prosecute an individual for a violation of Subsection (1) if the individual engages in a violation of Subsection (1) at or near the time the individual witnesses or is a victim of any of the following offenses, or an attempt to commit any of the following offenses, and the individual reports the offense or attempt to law enforcement in good faith:

(a) assault, Section 76-5-102;

(b) aggravated assault, Section 76-5-103;

(c) mayhem, Section 76-5-105;

- (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault under [Title 76,] Chapter 5, Part 2, Criminal Homicide;
- (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child under [Title 76,] Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (f) rape, Section 76-5-402;
- (g) rape of a child, Section 76-5-402.1;
- (h) object rape, Section 76-5-402.2;
- (i) object rape of a child, Section 76-5-402.3;
- (j) forcible sodomy, Section 76-5-403;
- (k) sodomy on a child, Section 76-5-403.1;
- (l) forcible sexual abuse, Section 76-5-404;
- (m) ~~[aggravated sexual abuse of a child or]~~ sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;
- (n) aggravated sexual assault, Section 76-5-405;
- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (q) aggravated burglary or burglary of a dwelling under [Title 76,] Chapter 6, Part 2, Burglary and Criminal Trespass;
- (r) aggravated robbery or robbery under [Title 76,] Chapter 6, Part 3, Robbery; or
- (s) theft by extortion under Subsection 76-6-406(2)(a) or (b).
- Section 122. Section **76-10-1306** is amended to read:
- 76-10-1306. Aggravated exploitation of prostitution.**
- (1) A person is guilty of aggravated exploitation if:
- (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305, the person uses any force, threat, or fear against any person;
- (b) the person procured, transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor; or
- (c) in the course of committing exploitation of prostitution, a violation of Section 76-10-1305, the person commits human trafficking or human smuggling, a violation of Section

5672 76-5-308, 76-5-308.1, 76-5-308.3, or 76-5-308.5.

5673 (2) Aggravated exploitation of prostitution is a second degree felony, except under
5674 Subsection (3).

5675 (3) Aggravated exploitation of prostitution involving a child is a first degree felony.

5676 (4) Upon a conviction for a violation of this section, the court shall order the maximum
5677 fine amount and may not waive or suspend the fine.

5678 Section 123. Section **76-10-1313** is amended to read:

5679 **76-10-1313. Sexual solicitation -- Penalty.**

5680 (1) An individual except for a child under Section 76-10-1315 is guilty of sexual
5681 solicitation when the individual:

5682 (a) offers or agrees to commit any sexual activity with another individual for a fee, or
5683 the functional equivalent of a fee;

5684 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
5685 individual to commit any sexual activity; or

5686 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
5687 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
5688 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
5689 of the following acts:

5690 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
5691 female breast below the top of the areola;

5692 (ii) masturbation;

5693 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
5694 female breast; or

5695 (iv) any act of lewdness.

5696 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
5697 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
5698 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

5699 (3) Except as provided in Section 76-10-1309 and Subsections (4) and (5), an
5700 individual who is convicted of sexual solicitation under this section or under a local ordinance
5701 adopted in compliance with Section 76-10-1307 is guilty of a class A misdemeanor.

5702 (4) An individual who is convicted a third time under this section or a local ordinance

5703 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

5704 (5) If an individual commits an act of sexual solicitation and the individual solicited is
5705 a child, the offense is a third degree felony if the solicitation does not amount to:

5706 (a) a violation of Section 76-5-308, 76-5-308.1, or 76-5-308.5, human trafficking or
5707 Section 76-5-308.3, human smuggling; or

5708 (b) a violation of Section 76-5-310, aggravated human trafficking or Section
5709 76-5-310.1, aggravated human smuggling.

5710 (6) (a) Upon encountering a child engaged in commercial sex or sexual solicitation, a
5711 law enforcement officer shall follow the procedure described in Subsection 76-10-1315(2).

5712 (b) A child engaged in commercial sex or sexual solicitation shall be referred to the
5713 Division of Child and Family Services for services and may not be subjected to delinquency
5714 proceedings.

5715 (7) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
5716 the individual engages in a violation of Subsection (1) at or near the time the individual
5717 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
5718 described in Subsection 76-10-1302(3), and the individual reports the offense or attempt to law
5719 enforcement in good faith.

5720 Section 124. Section **76-10-1315** is amended to read:

5721 **76-10-1315. Safe harbor for children as victims in commercial sex or sexual**
5722 **solicitation.**

5723 (1) As used in this section:

5724 (a) "Child engaged in commercial sex" means a child who:

5725 (i) engages, offers, or agrees to engage in any sexual activity with another individual
5726 for a fee, or the functional equivalent of a fee;

5727 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to
5728 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
5729 or the functional equivalent of a fee; or

5730 (iii) loiters in or within view of any public place for the purpose of being hired to
5731 engage in sexual activity.

5732 (b) "Child engaged in sexual solicitation" means a child who offers or agrees to
5733 commit or engage in any sexual activity with another person for a fee or the functional

5734 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

5735 (c) "Division" means the Division of Child and Family Services created in Section
5736 62A-4a-103.

5737 (d) "Juvenile receiving center" means the same as that term is defined in Section
5738 80-1-102.

5739 (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
5740 enforcement officer shall:

5741 (a) conduct an investigation regarding possible human trafficking of the child pursuant
5742 to Sections 76-5-308, 76-5-308.1, and 76-5-308.5;

5743 (b) refer the child to the division;

5744 (c) bring the child to a juvenile receiving center, if available; and

5745 (d) contact the child's parent or guardian, if practicable.

5746 (3) When law enforcement refers a child to the division under Subsection (2)(b) the
5747 division shall provide services to the child under Title 62A, Chapter 4a, Child and Family
5748 Services.

5749 (4) A child may not be subjected to delinquency proceedings for prostitution under
5750 Section 76-10-1302, or sex solicitation under Section 76-10-1313.

5751 Section 125. Section **76-10-1504** is amended to read:

5752 **76-10-1504. Bus hijacking -- Assault with intent to commit hijacking -- Use of a**
5753 **dangerous weapon -- Penalties.**

5754 (1) (a) A person is guilty of bus hijacking if the person seizes or exercises control, by
5755 force or violence or threat of force or violence, of a bus within the state.

5756 (b) Bus hijacking is a first degree felony.

5757 (2) (a) A person is guilty of assault with the intent to commit bus hijacking if the
5758 person intimidates, threatens, or commits assault or battery toward a driver, attendant, guard, or
5759 any other person in control of a bus so as to interfere with the performance of duties by the
5760 person.

5761 (b) Assault with the intent to commit bus hijacking is a second degree felony.

5762 (3) A person who, in the commission of assault with intent to commit bus hijacking,
5763 uses a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5, is guilty of a first
5764 degree felony.

Section 126. Section **76-10-1602** is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by Title

5796 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;
5797 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
5798 Offenses and Procedure Act;
5799 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
5800 Land Sales Practices Act;
5801 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
5802 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
5803 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
5804 Clandestine Drug Lab Act;
5805 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
5806 Securities Act;
5807 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
5808 Procurement Code;
5809 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
5810 (k) a threat of terrorism, Section 76-5-107.3;
5811 (l) a criminal homicide~~[Sections 76-5-201, 76-5-202, and 76-5-203]~~ offense, as
5812 described in Section 76-5-201;
5813 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
5814 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
5815 human trafficking, Sections 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-309, and
5816 76-5-310;
5817 (o) sexual exploitation of a minor, Section 76-5b-201;
5818 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
5819 (q) causing a catastrophe, Section 76-6-105;
5820 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
5821 (s) burglary of a vehicle, Section 76-6-204;
5822 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
5823 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
5824 (v) theft, Section 76-6-404;
5825 (w) theft by deception, Section 76-6-405;
5826 (x) theft by extortion, Section 76-6-406;

5827 (y) receiving stolen property, Section 76-6-408;
5828 (z) theft of services, Section 76-6-409;
5829 (aa) forgery, Section 76-6-501;
5830 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
5831 76-6-506.6;
5832 (cc) deceptive business practices, Section 76-6-507;
5833 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
5834 criticism of goods, Section 76-6-508;
5835 (ee) bribery of a labor official, Section 76-6-509;
5836 (ff) defrauding creditors, Section 76-6-511;
5837 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
5838 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
5839 (ii) bribery or threat to influence contest, Section 76-6-514;
5840 (jj) making a false credit report, Section 76-6-517;
5841 (kk) criminal simulation, Section 76-6-518;
5842 (ll) criminal usury, Section 76-6-520;
5843 (mm) fraudulent insurance act, Section 76-6-521;
5844 (nn) retail theft, Section 76-6-602;
5845 (oo) computer crimes, Section 76-6-703;
5846 (pp) identity fraud, Section 76-6-1102;
5847 (qq) mortgage fraud, Section 76-6-1203;
5848 (rr) sale of a child, Section 76-7-203;
5849 (ss) bribery to influence official or political actions, Section 76-8-103;
5850 (tt) threats to influence official or political action, Section 76-8-104;
5851 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
5852 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
5853 76-8-106;
5854 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
5855 (xx) obstruction of justice, Section 76-8-306;
5856 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
5857 (zz) false or inconsistent material statements, Section 76-8-502;

5858 (aaa) false or inconsistent statements, Section 76-8-503;
5859 (bbb) written false statements, Section 76-8-504;
5860 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
5861 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
5862 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
5863 (fff) tampering with evidence, Section 76-8-510.5;
5864 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
5865 a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and
5866 Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist
5867 Disclosure and Regulation Act;
5868 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
5869 76-8-1205;
5870 (iii) unemployment insurance fraud, Section 76-8-1301;
5871 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
5872 76-9-301(2)(d) or (e), or Section 76-9-301.1;
5873 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
5874 parts, Section 76-10-306;
5875 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
5876 device, Section 76-10-307;
5877 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
5878 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
5879 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
5880 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
5881 76-10-1002;
5882 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
5883 Section 76-10-1003;
5884 (rrr) sales in containers bearing registered trademark of substituted articles, Section
5885 76-10-1004;
5886 (sss) selling or dealing with article bearing registered trademark or service mark with
5887 intent to defraud, Section 76-10-1006;
5888 (ttt) gambling, Section 76-10-1102;

5889 (uuu) gambling fraud, Section 76-10-1103;
5890 (vvv) gambling promotion, Section 76-10-1104;
5891 (www) possessing a gambling device or record, Section 76-10-1105;
5892 (xxx) confidence game, Section 76-10-1109;
5893 (yyy) distributing pornographic material, Section 76-10-1204;
5894 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
5895 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
5896 (bbbb) distribution of pornographic films, Section 76-10-1222;
5897 (cccc) indecent public displays, Section 76-10-1228;
5898 (dddd) prostitution, Section 76-10-1302;
5899 (eeee) aiding prostitution, Section 76-10-1304;
5900 (ffff) exploiting prostitution, Section 76-10-1305;
5901 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
5902 (hhhh) communications fraud, Section 76-10-1801;
5903 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
5904 Currency Transaction Reporting Act;
5905 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
5906 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
5907 this state; and
5908 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
5909 Sec. 1961(1)(B), (C), and (D).
5910 Section 127. **Repealer.**
5911 This bill repeals:
5912 Section **76-5-210, Targeting a law enforcement officer defined.**
5913 Section **76-5-306, Lesser included offenses.**
5914 Section **76-5-416, Indecent liberties -- Definition.**
5915 Section 128. **Revisor instructions.**
5916 The Legislature intends that the Office of Legislative Research and General Counsel, in
5917 preparing the Utah Code database for publication, not enroll this bill if H.B. ____, Criminal
5918 Code Recodification Cross References, does not pass.